No. (T)

Supreme Court, U.S.
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In The

Supreme Court of the United States

In re AUGUSTUS SIMMONS,

Petitioner

On Petition For Writ Of Mandamus
To The Supreme Court Of Connecticut

PETITION FOR WRIT OF MANDAMUS

AUGUSTUS J. SIMMONS
P.O. Box #1
Windsor, CT 06095
(860) 569-6714
Owner-Title Holder

FEDERAL QUESTION

[DAMAGES – JUST COMPENSATION]

1.) Wherein undisputed, state acknowledged (Trans. June 7, 1982) Petitioner, Owner, Title Holder filed under *Simmons v. Wetherall,* #163875 with the Supreme Court of Connecticut on October 23, 2007 a [SECOND] MANDAMUS APPLICATION at 6(h) under OBSTRUCTION of JUSTICE-DESTROYING EVIDENCE revealing the position of the United States Supreme Court relative to a governmental regulation or action that has deprived a claimant of his property without just compensation is an – "Essentially ad hoc factual inquir[y]." *Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1977), reh. denied, 439 U.S. 883, 99 S.Ct. 226, 58 L.Ed.2d 198 (1978); see also *Keystone Bituminous Coal Assn. v. DeBenedictis,* 480 U.S. 470, 473-74, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987); *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 395, 413, 43 S.Ct. 158, 67 L.Ed. 322 (1922).

2.) What the Constitution does require is that the time of the invasion in case at bar, on or about July 1, 1962 constitutes "The act of taking by the United States," and, "it is that event which gives rise to the claim for compensation and fixes the rate as of which the land is to be valued." *United States v. Dow,* 357 U.S. 17, 22, 78 S.Ct. 1039, 1044, 22 L.Ed.2d 1109 (1958).

FEDERAL QUESTION – Continued

3.) Wherein the State [Agent] – Connecticut Department of Transportation (C.D.O.T.), without initiating any further affirmative action, after two (2) null and void condemnation attempts, took some numbers off the clock on the wall to make a "verbal offer" in December, 1977, wherein the United States Government – IN BAD FAITH – had displaced the owner in [1962] of a six (6) acre Parcel "C" as depicted on a map on file in Town of East Granby, Connecticut land records at Vol. 12, (map) page 568, – It was ILLEGAL – UNCONSTITUTIONAL – UNCHARACTERISTIC – CHAMPTEROUS for the reviewing Connecticut Supreme Court to seize, [Transmogrify] petitioner owner's tort action (Simmons v. Wetherall #163875) into an Eminent Domain Action and categorize such tortious conduct – "A JUDGMENT." See *Standard Oil Co. v. Missouri,* 32 S.Ct. 406 (1912).

4.) Whereupon, under Federal Question in *Shoemaker v. United States,* 147 U.S. 282, 13 S.Ct. 361 at 383 (1893) the United States Supreme Court of last resort reported (a) The courts have no discretion at all; (b) it is by the act directed to ascertain and assess the value of the land; (c) the means by which the court is to do it is also provided for; (d) if the court should decline to discharge that duty the commission (owner in case at bar), would be entitled to a MANDAMUS to compel it.

5.) Under Constitutional Law our highly respected United States Supreme Court has gone on record

FEDERAL QUESTION – Continued

that: the government is bound to make just compensation for whatever it shall take from the individual is undoubted; and in the words of the Supreme Court in *Great Falls Mfg. Co. v. Atty. General,* 124 U.S. 596, 8 S.Ct. 631 (1888): "It is to be assumed that the United States is incapable of BAD FAITH, and that Congress will promptly make the necessary appropriations whenever the amount of compensation has been ascertained in the mode prescribed."

TRESPASSERS AB-INITIO

6.) Where the Federal Question is – crystal clear – under Constitutional Law that the owner was [DISPLACED] by actions of the Federal Government, (F.A.A.), with their [exclusive] usurpation of the ground and air space; the State of Connecticut, (C.D.O.T.), pursuant to 42 U.S.C. § 4628 was acting as AGENT for the Federal Government – who – in BAD FAITH have been engaging in [LEASES] with the TRESPASSER (C.D.O.T.) for in excess of four (4) decades to avoid paying rent or just compensation of one (1) legal dollar – ignoring, disregarding the [FACT] that state courts had reverted ownership on March 24, 1972 with the Owner a prevailing party after two (2) failed condemnation attempts; making the United States Government (F.A.A.) and the State Transportation Department (C.D.O.T.) TRESPASSERS AB-INITO as of March 25, 1972, and, continuing to present date.

FEDERAL QUESTION – Continued

7.) Wherein the Supreme Court of Connecticut has ruled in *Karp v. Urban Redevelopment Comm. of Stamford,* 162 Conn. 525, 294 A.2d 633 (1972) that the filing of a written statement of compensation with the clerk's office of the Superior Court – *Did Not* – originate a civil action.

8.) [NO] FACTS; [NO] PLEADINGS; [NO] HEARINGS; [NO] ADDRESSING of DAMAGES or MARKET VALUE; [NO] NOTICES or SERVICE on the OWNER and NECESSARY PARTIES; [NO] ACCEPTANCE of UNCONSTITUTIONAL VERBAL "SLUSH FUND MONIES"; [NO] TENDERING ANY DEEDS; [NO] INITIATING ANY AFFIRMATIVE ACTION, of any nature, post March 24, 1972; [NO] SUBJECT MATTER JURISDICTION EVER ACQUIRED by the SUPERIOR COURT BELOW; [NO] JURISDICTION of the PARTIES by the SUPERIOR COURT BELOW; [NO] JURISDICTION of the PROCESS by the SUPERIOR COURT BELOW who have [EXCLUSIVE] JURISDICTION on all REAL PROPERTY MATTERS.

9.) In *Simmons v. Wetherall,* 472 F.2d 509 (1973) THE Second Circuit Court of Appeals ruled that: The allegations about the land upon which the runway lights are placed stand on a different footing – if the state had fenced it off and put runway lights on it. Assuming all that to be true, we are unable to conclude that "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which

FEDERAL QUESTION – Continued

would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). If the land is in fact Simmons, and the state indeed has fenced it off without paying him due compensation or instituting court proceedings, it would seem that a deprivation of appellant's right to "enjoy" the use of his land is stated. See *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 544, 92 S.Ct. 1113 (1972).

10.) The FACT that the TRESPASSER STATE AGENT, acting in collusion and conspiracy with malicious, tortuous, felonious, champterous, trespassing, private counsel (Rogin-Hirtle) – who – "Retracted" – "Retrenched" – "Gave notice of not going to try the case" – nevertheless – filed an appearance to OBSTRUCT JUSTICE, DESTROY EVIDENCE relative to a Federal Program/Project, [NULLIFYING] the "Reported" remand of the Second Circuit (472 F.2d 509 (1973)); [NULLIFYING] the judgment of Referee Shapiro on Superior Court records as of January, 17, 1977 that constituted a taking of plaintiff's land without statutory authority; and uncompensated taking in the constitutional sense in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of Article First, Sec. 11 of the Connecticut Constitution (Ex. #16).

11.) The ruling by the Connecticut Supreme Court under *Simmons v. Wetherall, supra*, that such EXTRAORDINARY UNCONSTITUTIONAL ACTIVITY was

FEDERAL QUESTION – Continued

to be labeled a supplemental or stipulated judgment – warrants – a writ of MANDAMUS setting such decree aside and the United States negotiate a [LEASE] with the owner – not the TRESPASSER.

MANDAMUS APPLICATION #1 (August 8, 2007)

12.) Petitioner/Owner/Titleholder not having been paid-offered-deposited or ascertained or assessed the value of the land – "TAKEN" by the Federal Agency (F.A.A.) as of July 1, 1962 of ONE LEGAL AMERICAN DOLLAR, AND, the filing of MANDAMUS APPLICATION #1 on August 8, 2007 with the Supreme Court of Connecticut was just another [Exercise in Futility]; the state's highest reviewing court – continually – relying on its [ORDER] of May 31, 2000 (Ex. #10) that the plaintiff is hereby prohibited from filing pleadings in this court that are related to Docket #163875 that was, is, remains an active case as a supplement to the due process clause of the Fifth and Fourteenth Amendments; that just compensation (damages) must (shall) be addressed as a result of two (2) null and void condemnations; that the issue of just compensation was – [NEVER] – addressed, ascertained, determined with the OBSTRUCTION OF JUSTICE by nullifying all hearing dates (Ex. #14); that the agent (C.D.O.T.) taking some numbers off the clock on the wall to make a – VERBAL OFFER – AND, the owner informed the malicious, felonious, tortious private counsel (Rogin-Hirtle) representing

FEDERAL QUESTION – Continued

the owner, in writing (Ex. #4), in polite fashion to: [Take your verbal offer and get the hell out of town – while you are in one piece]. The Superior Court record shows the [off-the-wall disputed numbers] returned to the Treasury on December 23, 1991 (Ex. #9).

13.) WHERE – The Special Act #170 (1969) was a Fifth and Fourteenth Amendment Supplement against any defenses of sovereign immunity and/or the reviewing Connecticut Supreme Court acting – [WITHOUT] – any affirmative action, notice, service, hearings, assessments, judgments before the court below: our United States Supreme Court has stated: Rule 71A(h) "Provides that, except for the single issue of just compensation, the trial judge is to decide all issues, legal and factual, that may be presented." *United States v. Reynolds,* 397 U.S. 14, 19, 90 S.Ct. 803, 806, 25 L.Ed.2d 12 (1970).

14.) Under Federal Question and PROCEDURAL DUE PROCESS our United States Supreme Court – continually – DEVIATING from its ruling of *Chicago B. & O.R. Co. v. Chicago,* 17 S.Ct. 581 (1897) that a court rendering a judgment should have [JURISDICTION], not only of the parties, but of the subject matter and the process; DEVIATING from its basic fundamental constitutional mandate that COMPENSATION AND DAMAGES must (shall) be determined, ascertained as of date or time of taking (notwithstanding two (2) failed condemnation attempts) and INTEREST must (shall) be considered

FEDERAL QUESTION – Continued

pursuant to its holding in *United States v. Dow, supra*, referenced in #2; DEVIATING from its holding in *Connecticut v. Doerr,* 111 S.Ct. 2105 (1991) (Connecticut Case) that some type of post-deprivation hearing must take place – as a minimum; DEVIATING from its holding in *Seaboard Airline R. Co. v. United States,* 261 U.S. 299, 306 (1923) whereby the owner is not limited to the value of the property at the time of taking: He is entitled to such addition as will produce the full equivalent of that value paid. INTEREST at a proper rate "is a good measure by which to ascertain the amounts to be added."

15.) Under Federal Question, where the issue from day one was the condemnation action by the state in February 1962, against a "FEDERAL TAKING for AIRPORT PURPOSES" of a parcel designated as Parcel I (c) on land records of East Granby, CT at Vol. 12 (map), p. 568 whereby just compensation could not be agreed upon, AND, was – never – resolved [COULD NOT] be resolved where on June 6, 1982 (quarter century ago) in Superior Trial Court before Hon. Dupont, A., the state (Assistant Attorney General, Victor Feingold) challenged the Trial Court with not having subject matter jurisdiction – or the process, and, Attorney Walter Bass made clear that neither he nor his clients (Valente-Allaire) were ever served with process or notice, coupled with the FACT that the (Rogin-Hirtle, Esq.'s) law firm was "Not going to try the case" – yet – the felonious, tortious,

FEDERAL QUESTION – Continued

malicious petitioner's counsel having been discharged (Ex. #4, December 23, 1977); having legally withdrawn from representation (Ex. #6, April 19, 1978); having intentionally, maliciously, feloniously – in direct violation of the Fifth and Fourteenth Amendments and Special Act #170 (1969) of SHANGHA[ING] the judgment of Referee Shapiro on Superior Court records of Docket #162923 as of January 17, 1977 (Ex. #16); SHANGHA[ING] scheduled hearing dates (Ex. #14), denying a day in court to address damages; SHANGHA[ING] two (2) active Federal Court Cases including 472 F.2d 509 (1973) on remand; adding INSULT TO INJURY by putting a taking on the land records – but – no returns to the Superior Court of Parcel II (Parcel (D)) of a 1.12 acre "TAKING" in 195? (half century ago) of land for Federal-Aid Highway, Route #20 without any compensation consideration; a taking on the land records – but – no returns to the Superior Court of Parcel III (Parcel A, 2.2 Acres) without any compensation consideration; adding Exhibit (B) stating that petitioner/owner [COVENANTS] restrictions regards height, lighting, right of first refusal, and other encumbrances without any discussion or hearing on the merits, no returns to the Superior Court; the owner putting a DISSOLUTION OF ATTACHMENTS PURSUANT TO C.G.S. § 52-327 on the land records on December 1, 1996 (Ex. #2) – warrants – justifies – mandates – A MANDAMUS of wiping the record clear of the Connecticut Supreme

FEDERAL QUESTION – Continued

Court decision 180 Conn. 587 (1980) where there is NO RECORD before the court below.

FINALITY

16.) Citing *United States v. 341.45 Acres of Land,* 633 F.2d 108 (C.A. Minn. 1980) wherein this United States Supreme Court remanded for a new trial – for several reasons – including the fact the government may not, however, defer the deposit of funds in court in order to compel an agreement on the price of the property, see 42 U.S.C. § 4651(7); "A 'Final Decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States,* 324 U.S. 229, 233, 65 S.Ct. 631, 633, 89 L.Ed. 911 (1945), albeit, in case at bar, there was [NO] litigation on the merits, [NO] affirmative action or appraisals initiated after March 24, 1972, [NO] decisions or judgments before the Superior Court who have [exclusive] jurisdiction of real property matters; where the determination of the award is an offer subject to acceptance by the [FORMER CONDEMNEE] and the record is – ultra clear – the current owner would not [TAKE-A-BITE] of an apple that was rotten-to-the-core for the obvious reason that courts – regardless of circumstances – DO NOT – permit a second bite, and, where the record is – ultra clear – there was no tendering of deeds under our AMERICAN JURISPRUDENCE (Ex. #5, April 19, 1978) making – Ultra Clear – the 'TAKING' United States Government

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and the State of Connecticut (C.D.O.T.) were, are, continuing TRESPASSERS until such time as AFFIRMATIVE ACTION is initiated, instituted, begun to acquire Eminent Domain Rights in the subject properties.

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To the Honorable Chief Justice Roberts
and Associate Justices of the
Supreme Court of the United States

Pursuant to Rules 17 and 20 of the Revised Rules of the Supreme Court of the United States, Petitioner applies for a Writ of Mandamus, directed to the Honorable Borden, Judge of the State Supreme Court, the respondent named above; and in support of this application petitioner states:

ORDER AND OPINION BELOW

On May 13, 1980, the Supreme Court of Connecticut with NO RECORD at the court below (Superior) of any process being initiated by respondent, Connecticut Department of Transportation that would get the subject property before the court after two (2) null and void condemnation attempts; where petitioner's newly obtained replacement counsel (Rogin-Hirtle, Esquires) phone called to inform petitioner – "They were NOT going to try the case," and, before the ink was dry on the contract, proceeded to file an appearance to [DEACTIVATE] every active State and Federal court case pending, including *Simmons v. Wetherell*, 472 F.2d 509 (2d Cir. 1973) on remand; where the record shows a discharge within ten (10) days of appearance, was, ineffective to control additional damage being imposed against their former client; where the two bureaucracies were, are, and continuing as "CO-CONSPIRATORS" in "LEASING" of the subject property; that the United States

has in BAD FAITH used leases as a defense for not paying a DIME of compensation for forty-five (45) years, and, the Connecticut Supreme Court making it a "TROICA" by putting its stamp of approval on the "combining of cases" to [put down the drain] thirty (30) days of trial and judgment for plaintiff on Superior Court records on January 17, 1977 by Referee Shapiro, L. of *Simmons v. Parizek,* Docket #162923, BUT, more importantly under Rules of Procedure the owner has a CONSTITUTIONAL RIGHT to not even listen to a [verbal] offer, has a CONSTITUTIONAL RIGHT to not tender any deeds (Ex. #5); has a CONSTITUTIONAL RIGHT to Due Process in the primary sense of Notice and Opportunity to be heard; the [borrowing-seizure] by the Connecticut Supreme Court of petitioner's tort action, *Simmons v. Wetherall,* #163875 to proclaim, render a judgment where there is not any proceedings instituted by the "Agent – C.D.O.T.," no pleadings, no docket number, no determinations – ascertainments – written statements of compensation; no proceedings – of any nature – before the court below since March 24, 1972 when ownership reverted back to the owner; where the record shows these basic fundamental constitutional infringements were argued a quarter century ago on June 7, 1982 in Superior Court before Hon. DuPont, A., after the purported three dollar bill judgment of Supreme Court of May 13, 1980 – DISALLOWING any distribution of "verbal slush finds"; – the U.S. acknowledges all Federal Funds earmarked for the subject Federal Project were reverted back into their General Fund (Ex. #13); the corrupt,

discharged, legally withdrawn petitioner's counsel (Rogin-Hirtle, Esquires) in collusion, conspiracy with the state agent (C.D.O.T.), who never instituted any eminent domain procedures, never gave notice or served interested and necessary parties, never having established through appraisals – or other means – of fair compensation as of date of taking or the value of allowable damages, no written offers, wherein, whereby all these BASIC PROTECTIONS under 49 C.F.R. § 24.102 are a MANDATE for Federal Projects, nevertheless, place encumbrances and maps on land records without using a sheriff or indifferent person – that could never be executed, there obviously was no returns to the Superior Court and, the Supreme Court would NEVER allow, permit, grant a HEARING as required by statute of its validity and the United States Supreme Court in *Connecticut v. Doerr,* 501 U.S. 1, 111 S.Ct. 2105, 115 L.Ed.2d 1 (1991) made clear that some type of post-deprivation hearing must take place – as a minimum. The vacating of the attachments is part and parcel of this mandamus application.

[DUE PROCESS]

1. Where the right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, see *Boddie v. Connecticut,* 401 U.S. 371, 375, 91 S.Ct. 780, 784, 28 L.Ed.2d 113 (1971); *Anti-Fascist Committee v.*

McGrath, 341 U.S. 123, 171, 172, 71 S.Ct. 624, 648-649 (1951) (Frankfurter, J., concurring), the denial of procedural due process should be actionable for [substantial] damages where the injury from two (2) null and void condemnations is obvious mandating a remand, where, petitioner never had – "A-Day-In-Court." There was NO TRIAL.

[UNITED STATES]

2. Where United States effectively appropriated lands in connection with construction of navigational instrumentation FORTY-FIVE (45) years ago, thereby interfering with recognizable interest of owner, United States was obliged to pay owner fair rental value of that property for period involved, U.S.C.A. Const. Amend. 5, *Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982). See also *Kaiser Aetna v. United States,* 444 U.S. 164, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979); and *United States v. General Motors Corp.,* 323 U.S. 373, 382, 65 S.Ct. 357, 89 L.Ed. 311 (1945); *Kimball Laundry Co. v. United States,* 338 U.S. 1, 7, 69 S.Ct. 1434, 93 L.Ed. 1765 (1949).

[U.R.A.]

3. The U.R.A., Public Law 91-646, 84 Stat. 1894, enacted January 2, 1971 has a policy declaration wherein the statute mandates that benefits [shall] be extended to persons displaced by real property acquisitions when the real property is

acquired "for a program or project undertaken by a Federal Agency" 42 U.S.C. § 4622(a) or "[W]henever real property is acquired by a State Agency. . . ." 42 U.S.C. §§ 4627, 4628.

[DISPLACED PERSON]

4. Under 42 U.S.C. § 4601(6), persons displaced by action of the United States come within the definition of "displaced person," since petitioner was displaced "as a result of the acquisition of . . . real property . . . for a program or project undertaken by a Federal Agency, or with Federal Financial Assistance," was intended to benefit individuals who are not willing sellers.

[LEASING]

5. Where the LEASING is one, if not the most important issue, in this four decades fiasco and was claimed – again – at #8 under supporting facts of DIRECT ATTACK MOTION, dated January 3, 2007, that is repeated henceforth: Where the "LEASING" between the two bureaucracies (Connecticut Department of Transportation and United States – F.A.A.) of subject real property has, was, is, [continues] an outright, blatant, denial of just compensation to the owner, and, a 30-day trial over the period of one year before Referee Shapiro concludes on January 17, 1977, the effect of which was to curtail, stop the leasing of property the state does not own nor never legally acquired, and, EJECT the Federal Agency for

not paying rent; was awarded reimbursement of certain expenses as permitted by law, BUT, lo and behold, the Connecticut Supreme Court – [NULLIFIES] – the judgment of *Simmons v. Parizek,* #162923 under the canopy of "COMBINING OF CASES" in 180 Conn. 587 (1980); was [and CONTINUES], an outright, intentional, blatant violation of the Fifth and Fourteenth Amendments that private property cannot be taken without just compensation.

[INTEREST]

6. Citing *Jacobs v. United States,* 290 U.S. at 16-17 (1933) reads: The amount recoverable was just compensation, not inadequate compensation. The concept of just compensation is comprehensive and includes all elements, "and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation." The owner is not limited to the value of the property at the time of taking; "he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking." Interest at a proper rate "is a good measure by which to ascertain the amount so to be added." *Seaboard Air Line R. Co. v. United States,* 261 U.S. 299, 306 (1923).

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a).

STATEMENT OF FACTS

DOCKET NUMBER: CV00163875	SUPREME COURT STATE OF CONNECTICUT
AUGUSTUS SIMMONS	
VS.	MARCH 28, 2007
HORACE WETHERALL	

[Second] Direct Attack Motion

Under – FEDERAL QUESTION – to the Supreme Court of Connecticut to: VACATE, SET ASIDE, wipe the Supreme Court record clear of its decree referred to as a "JUDGMENT" under *Simmons v. Wetherall,* #163875, dated May 13, 1980, that is VOID on its face where Plaintiff/Owner, title holder/ prevailing party in two (2) condemnation attempts – HAS NOT – been allowed to vindicate his "ABSOLUTE" right to procedural Due Process in the *primary sense,* – HAS NOT – had an opportunity to present its case (a-day-in-court) and be heard in its support; where there is not, has not, was not any court proceedings (condemnations) instituted after reverting of ownership on March 24, 1972 – nor – the Federal Court Remand of *Simmons v. Wetherall,* 472 F.2d 509 (2d

Cir. 1973), against a "TAKING," seizure by the United States for a Federal Public Project in the year of 1962 for which market value as of date of taking for fair compensation has – NEVER – been ascertained, offered, determined or deposited by neither the federal nor state acquiring agencies. See *Almota Farmers Elevator & Warehouse v. United States,* 409 U.S. 470, 473-74, 93 S.Ct. 791, 794, 35 L.Ed.2d 1 (1973); *Brinkerhoff-Faris v. Hill,* 281 U.S. 673 (1930); *Armstrong v. Manzo,* 380 U.S. 545 (1965); *Carey v. Piphus,* 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978); *Lynch v. Household Fin.,* 405 U.S. 538, 92 S.Ct. 1611, 31 L.Ed.2d 424 (1972).

Supporting Facts

1. **Special Act #170 (1969) *Simmons v. Wetherall* #163875**

Where the District Court, Hon. M. Joseph Blumenfeld, Chief Judge, recognized and acknowledged the reason for the Special Act was to allay, foreclose any further claims of [Sovereign Immunity] and the Second Circuit Court in *Simmons v. Wetherell,* 472 F.2d 509 at 512 (2d Cir. 1973) remanded stating – if the land is in fact Simmons' and the State indeed has fenced it off, and put runway lights on it, without paying him due compensation or instituting court proceedings, it would seem that a deprivation of appellant's right to "enjoy" the use of his land is stated. See *Lynch, supra,* 405 U.S. at 544, 92 S.Ct. 1113.

Citing *Brinkerhoff, supra*, 281 U.S. at 682 (1930) – whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it. The ORDER of May 31, 2000 (Ex. #10) was an attempt to [DETRACT] from its Fourteenth Amendment Constitutional deprivations, and, lack of JURISDICTION.

2. No-Day-In-Court

Under Procedural Due Process whereby the reviewing State Supreme Court cannot, has not entertained any appeals that are not from a Final Judgment, or no written Statement of Compensation; where there was no compliance with C.G.S. § 8-129 (Ex. #15) regards possession of land that is mandatory; where the placing of encumbrances on the land records under plaintiff's Tort Action, #163875, is prima facie evidence of no state proceedings being instituted; where the return to the Treasury of the "Verbal Slush Fund" (Ex. #9) is prima facie evidence of no proceedings instituted; where the state agency, in collusion and conspiracy with the federal agency, were, and continue, engaging in "LEASING" private property for decades of denial of compensation, it was awkward and embarrassing to institute condemnation proceedings (third time) where the owner [DID NOT] entertain any part of a verbal slush fund or tender any deeds.

3. Uniform Land Acquisition Policies Act

Where throughout this decades-long litigation there was intervening congressional procedures that superseded all State and Federal procedures (P.L. 91-646), Uniform Land Acquisition Policies Act of 1970, effective January 2, 1971, 84 Stat. 1894 and plaintiff proceeding in two (2) separate 42 U.S.C. § 1983 Federal Court actions, Appeal #72-1541 and #73-14806 in which jurisdiction was correctly predicated upon 28 U.S.C. § 1343(3) referencing *Lynch v. Household Fin. Corp.,* 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972) seeking reimbursement for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees and in *Lewis v. Pennington,* 400 F.2d 806, 819 (6th Cir. 1968) the "prevailing party is prima facie entitled to costs"; in *Drakes Bay Land Co. v. United States* (CT. – CL. No. 275-66) defendant conceded in 1972 plaintiff is entitled to recover in that case reasonable attorney, appraisal, and engineering fees actually incurred, and *Drakes Bay, supra,* is analogous to case at bar in the fact that the taking was ten years earlier, the successful prevailing party in procedural victories, JUSTIFY an award of attorney fees under 42 U.S.C. § 4654 (304C); the reverting of title and ownership on March 24, 1972, not withstanding ten (10) years of occupancy and use by the United States was an automatic mandate the federal agency comply with the congressionally mandated legislation, effective January 2, 1971, per 42 U.S.C.

§ 4601 as principal and the state agency an agent under 42 U.S.C. § 4628.

4. State or United States Obligation Under Fifth and Fourteenth Amendments

Where plaintiff seeks just compensation for the use and occupancy of its property by the United States from July 1, 1962, to present day and beyond, a period during which plaintiff was deprived of the use and enjoyment of a part of its land without receiving compensation either from the United States or the State and the navigational servitude taking by the United States was permanent in nature, the State of Connecticut has made its position clear that it is the United States' obligation to address fair compensation and pay interest, where no compensation has been made, as expressed in the dialogue of *Carl Roessler, Inc. v. Ives,* 156 Conn. 131 at 142, 143 (1968) that reads:

> The same result has been reached by the federal courts in condemnations of land by the United States Government. "The law is clear that in eminent domain cases the government, after filing a declaration of taking and depositing in court the estimated just compensation, cannot change its mind and divest itself of the title taken." *Chandler v. United States,* 372 F.2d 276, 278 (10th Cir. 1967). "Broadly speaking, the United States may take property pursuant to its power of eminent domain in one of two ways: it can enter into physical possession of property

without authority of a court order; or it can institute condemnation proceedings under various Acts of Congress providing authority for such takings. Under the first method – physical seizure – no condemnation proceedings are instituted, and the property owner is provided a remedy under the Tucker Act . . . to recover just compensation . . . Under the second procedure the Government may either employ statutes which require it to pay over the judicially determined compensation before it can enter upon the land . . . or proceed under other statutes which enable it to take immediate possession upon order of court before the amount of just compensation has been ascertained . . . although in both classes of 'taking' cases – condemnation and physical seizure – title to the property passes to the Government only when the owner receives compensation, see *Albert Hanson Lumber Co. v. United States,* 261 U.S. 581, 587 [43 S.Ct. 442, 67 L.Ed. 809], or when the compensation is deposited into court pursuant to the Taking Act, . . . the passage of title does not necessarily determine the date of 'taking'. The usual rule is that if the United States has entered into possession of the property prior to the acquisition of title, it is the former event which constitutes the act of taking. It is that event which gives rise to the claim for compensation and fixes the date as of which the land is to be valued and the Government's obligation to pay interest accrues. See *United States v. Lynah,* 188 U.S. 445, 470-471 [23 S.Ct. 349, 47 L.Ed. 539];

United States v. Rogers, 255 U.S. 163 [41 S.Ct. 281, 65 L.Ed. 566]; *Seaboard Airline R. Co. v. United States,* 261 U.S. 299 [43 S.Ct. 354, 67 L.Ed. 664]." *United States v. Dow,* 357 U.S. 17, 21, 78 S.Ct. 1039, 2 L.Ed.2d 1109; see *Mastic Acres, Inc. v. State,* 46 Misc. 2d 660, 663, 260 N.Y.S. 2d 532.

5. Just Compensation

Instituting *Simmons v. Wetherall* #163875 was for claims that plaintiff suffered – substantial – damages that [must] be heard and determined in the manner provided by the State Statutes C.G.S. §§ 48-16, 48-17a and plaintiff being a person displaced due to a governmental program requiring the acquisition of real property, and the State Court having a right to resolve the "FEDERAL QUESTION," [must], pursuant to the Uniform Act (P.L. 91-646), mandatory on all states no later than July 1, 1972, requires a state agency, so acting, to provide reimbursement of certain expenses such as attorney, appraisal, engineering fees. The lawless conduct by plaintiff's counsel (Rogin-Hirtle) that was in direct conflict with state statutes and superseding Federal Law reveal that [Additional Damage] and [infringement of the constitutional rights of plaintiff] was imposed upon plaintiff where no notice or opportunity for a hearing was allowed, permitted, or granted relative to the determining of fair compensation, no notice or hearing was allowed, permitted, or granted relative to costs that included attorney fees; where the record shows the

first brief to the State Supreme Court in October 1978 was submitted under *State v. Simmons,* #202121 an injunction action that was dismissed for failure to prosecute, that was REJECTED by the State Supreme Court Clerk, who, remarked the briefs [#9200] could be RE-FILED under *Simmons v. Wetherall* #163875 wherein the matter of JURISDICTION was raised at page 10 and 11 and had to be addressed when raised, but, was TOTALLY IGNORED.

From day one DAMAGES is, was that part of fair compensation that [MUST] be addressed and the Connecticut Supreme Court having decreed in 1965 that: "Damages sustained in a taking by eminent domain are to be measured as of date of taking." *Research Associates, Inc. v. New Haven,* 152 Conn. 137, 139, 204 A.2d 833 (1965); *Slavitt v. Ives,* 163 Conn. 198, 207, 303 A.2d 13 (1972). Under Title III of P.L. 91-646, mandatory on all states, 42 U.S.C. § 4655(2) reads: property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 (42 U.S.C. §§ 4653, 4654).

In *Almota Farmers Elevator & Warehouse Co. v. United States,* 409 U.S. 470, 473-74, 93 S.Ct. 791, 794, 35 L.Ed.2d 1 (1973), the Supreme Court defined just compensation as follows:

> "[J]ust compensation means the full monetary equivalent of the property taken. The owner is to be put in the same position monetarily as he would have occupied if his property had not been taken." *United States*

v. Reynolds, 397 U.S. 14, 16 [90 S.Ct. 803, 805, 25 L.Ed.2d 12] (1970) (Footnotes omitted). See also *United States v. Miller,* 317 U.S. 369, 373 [63 S.Ct. 276, 279, 87 L.Ed. 336] (1943). To determine such monetary equivalence, the Court early established the concept of "market value": the owner is entitled to the fair market value of his property at the time of the taking. *New York v. Sage,* 239 U.S. 57, 61 [36 S.Ct. 25, 26, 60 L.Ed. 143] (1915). See also *United States v. Reynolds, supra,* [397 U.S.] at 16 [90 S.Ct. at 805]; *United States v. Miller, supra,* [317 U.S.] at 374 [63 S.Ct. at 280]. And this value is normally to be ascertained from "what a willing buyer would pay in cash to a willing seller." [*Miller, supra,* 317 U.S. at 374, 63 S.Ct. at 280]. See *United States v. Virginia Electric & Power* Co., 365 U.S. 624, 633 [81 S.Ct. 784, 790, 5 L.Ed.2d 838] [1961]. See also *United States v. 103.38 Acres of Land,* more or less, etc., 660 F.2d 208, 211 (6th Cir. 1981).

Fee Award

Citing *Farrar v. Hobby,* 506 U.S. 103, 113 S.Ct. 566, 574 (1992): Once civil rights litigation materially alters the legal relationship between the parties, "The degree of the plaintiffs overall success goes to the reasonableness" of a fee award under *Hensley v. Eckerhart,* 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). Indeed, "the most critical factor" in determining the reasonableness of a fee award "is the degree of success obtained." As part of the MOTION

FOR REMAND is the entitlement by the owner of [FEES] congressionally mandated under Title III of P.L. 91-646 and C.G.S. § 48-17a, should be provided to all persons displaced by a Federal Project.

Supreme Court Order – May 31, 2000, Ex. #10

Under FEDERAL QUESTION, *Simmons v. Wetherall,* #163875 as a tort claim is a "species of 'property' protected by the DUE PROCESS CLAUSE." *Martinez v. California,* 444 U.S. 277, 281-82, 100 S.Ct. 553, 556-57, 62 L.Ed.2d 481 (1980); where the state cannot by "ipse dixit" transmogrify the tort action into an eminent domain, see *Standard Oil Co. v. Missouri,* 224 U.S. 270, 323 S.Ct. 406, 56 L.Ed. 760 (1912); where the Connecticut Supreme Court is a REVIEW court by statute of final judgments and not a maker or proclaimer; where in direct violation of Title III of P.L. 91-646, the Fifth and Fourteenth Amendments of the United States Constitution and Art. 1 § 11 of the Connecticut Constitution there is [NO PROCESS], the issuance and service of process or notice is indispensable to the jurisdiction of the court to determine the adverse claims of parties to the litigation. Until notice is given to the defendant of the action as proceedings against him, and he is thereby given opportunity to appear and be heard, the Court has no jurisdiction to proceed to judgment against him – [or CLOSE THE DOORS] – even though it may have jurisdiction of the subject matter. One who is not served with process does not have the status of a party to the proceeding, the parties and

their case must be brought before the Court and this is accomplished by the use of process. 62 Am. Jur. 2d Process § 3.

Where, it is not the return but the fact of actual service that gives courts (including Connecticut Supreme Court) jurisdiction. *Wade v. Wade,* 7 A.L.R. 1143 (1918); 21 R.C.L., page 1331, Sec. 79.

Conclusion

It is apparent and crystal clear that throughout this decades-long litigation, the Petitioner/Owner/Title Holder has been the victim of COLLUSION and CONSPIRACY between the Federal and State Agencies engaging in "LEASES" of the subject property without – EVER – addressing fair compensation as mandated by 49 C.F.R. § 24.102(d) against federal projects or federally assisted projects. Each Bureaucracy pointing a finger at each other as being contractually or constitutionally mandated to determine fair compensation.

Where the multiplicity of every type of action possible has been submitted to the United States Supreme Court for relief where there is [NO CASE] in any state or federal court regarding the subject property since March 24, 1972; where there is no Docket number, judgment or process in any court, there cannot be any OUT-OF-TIME against a JURISDICTION challenge as expressed in *Harris v. Hardeman,* 55 U.S. 334 (1852).

Petitioner pleads under the rudiments of justice for an opinion as stated in *Joint Anti-Fascist Refugee Comm. v. McGrath,* 71 S.Ct. at 652, expressing: Notice and opportunity to be heard are fundamental to due process of law. We would reverse these cases out of hand if they were suits of a civil nature to establish a claim against petitioners.

Respectfully submitted,

/s/ Augustus Simmons

Augustus Simmons
P.O. Box 1
Windsor, CT 06095
(860) 569-6714

REASONS WHY WRIT SHOULD ISSUE

1. The Real Federal Question of grave public importance, for which petitioner seeks a Writ of Mandamus was the abdication of the judicial function depriving the parties of a trial before the court on the basic issues involved in the litigation with "the persistent wholesale disregard of the Due Process Clause * * * prescribed by the Fifth and Fourteenth Amendments."

2. The judgment of a court without jurisdiction is a nullity. Such a judgment, whenever and wherever declared upon as a source of right, may always be challenged. This does not offend the full faith and credit clause of the Federal Constitution, nor does it

violate the principles of comity. *Samson v. Bergin,* 138 Conn. 306 (1951).

3. Where Congress in the All Writs Act conferred on the courts the review power, to be used only in the exceptional case where there is clear abuse of discretion or "usurpation of judicial power"; petitioner alleges the usurpation of judicial power by the Connecticut Supreme Court (not Superior Court) is of the sort held to justify the Writ of Mandamus in the case of *DeBeers Consolidated Mines v. United States,* 325 U.S. 212, 217, 65 S.Ct. 1130, 1133, 89 L.Ed. 1566 (1945).

4. It is crystal clear that there – WAS NOT – any proceedings instituted by the State Agency after March 24, 1972 (date of reverting ownership) against the subject property; there – WAS NOT – IS NOT – any docket number, pleadings, decrees, judgments on Superior Court records that is substantiated by the court invoking *Shelton v. Wolthausen,* 80 Conn. 599 (1908) (Exs. #7 and 7(a)), denying attorney fees to the discharged and legally withdrawn private counsel (Rogin-Hirtle) wherein, whereby, the court can only dispose of money put into court through the medium of proceedings had in or relating to that cause.

5. It is crystal clear that a quarter century ago on June 7, 1982, the State (Attorney General's Office) in Superior Court, before Hon. DuPont, A., challenged the court with lack of subject matter jurisdiction; it is crystal clear that on that same court hearing, counsel for two lien-holders (Valente-Allaire), private counsel

Bass, W., challenged the court with [NO] notice or service on him or his clients; it is crystal clear that no judgments can be rendered – without any service – or – without the parties before the court, (see *Jepsen v. The Toni Co.,* 20 Conn. Supp. 287, 133 A.2d 150 (1957)); it is crystal clear Rule 70 of the Rules of Civil Procedure, which permits the issue of a writ of attachment or sequestration against the property of a disobedient party to compel satisfaction of a judgment, is operative only after a judgment is entered; it is crystal clear that where there was a Federal taking for a Federal Project – as in case at bar, the Connecticut Supreme (Reviewing) Court pursuant to C.G.S. § 13b-50, Sec. d must review for compliance with Federal Rules of Procedure; it is crystal clear that when the Supreme Court has no judicial power to do what it purports to do – when its action is not mere error but usurpation of power – the situation falls precisely within the allowable use of the Mandamus Writ.

6. Where the National Government is guardian of a public right of access to navigable airspace of the United States; the navigational servitude is the legal formula by which we recognize the paramount nature of this government responsibility that has exclusive jurisdiction of certain navigational instrumentation on the surface of private property of plaintiff, the United States must be a necessary party to any such judgment, or other procedure, and if the government physically invades only an easement in property, it

must nonetheless pay compensation. *United States v. Causby,* 328 U.S. 256, 265 (1946).

7. It is Hornbook Law that "any judgment should conform to pleadings, issues and prayers for relief" *Kawasaki, Kissen, Kaisha, Ltd. v. Indomar, Ltd.,* 173 Conn. 269, 377 A.2d 316 (1977); *Brill v. Ulrey,* 159 Conn. 371, 269 A.2d 262 (1970); *Morici v. Jarvie,* 137 Conn. 97, 75 A.2d 47 (1950); *Shaw v. Spelke,* 110 Conn. 208, 147 A. 675 (1929); *Steinmetz v. Steinmetz,* 125 Conn. 663, 7 A.2d 915 (1939). The Connecticut Supreme Court had occasion to discuss this principle in *New Haven Sandblast Co. v. Dreisbach,* 104 Conn. 322, 330, 133 A. 99 (1926). In that case, the court stated: A defect in a judgment arising from the fact that the matter decided was not embraced within the issue has not, it would seem, received much judicial consideration. And yet, I cannot doubt that, upon general principles, such a defect must avoid judgment.

8. It is unmistakable from the plain language of 42 U.S.C. § 4655 that the [STATES] must comply with the land acquisition procedures specified in § 4651 regardless of whether persons are displaced from their homes – or – farms, as a result of the land acquisition. It is undisputed that the acquisition of the subject property by United States [IS] – [WAS] a necessary incident to the construction of the navigational servitude. The ruling by the Connecticut Supreme Court of a "three dollar bill judgment" was ARBITRARY, UNREASONABLE, UNCONSTITUTIONAL, and in direct violation of mandatory Federal Law whereby the

state [MUST] comply with § 4651 to the greatest extent legally possible under State Law, notwithstanding that such compliance may be "UNECONOMICAL." See *City of Columbia, S.C. v. Costle,* 710 F.2d 1009 (4th Cir. 1983)"

9. What the Constitution does require is an opportunity * * * "granted at a meaningful time and in a meaningful manner," *Armstrong v. Manzo,* 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965), "For [A] hearing appropriate to the nature of the case," *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. at 313, 70 S.Ct. at 657. In short, "within the limits of practicability," a state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause, 70 S.Ct. at 659.

10. Where it is a well-established rule that the court will not quash a writ of attachment execution or foreign attachment unless some fundamental irregularity appears on the face of the record, yet it is a recognized exception to that rule that evidence dehors the record may be a ground for quashing a writ where defects therein are of such a character to put plaintiff completely out of court. *Pasquinelli v. Southern Macaroni Mfg. Co.,* 272 Pa. 468, 116 A. 372 (1922). The present case comes within the exception therein indicated, viz, "that the property in question is, by use, statute, and the federal regulation, exempt from attachment." The fact that the National Government has not made any compensation – does not permit subject property to attachment.

11. Where the courts have held that the absence of a citation rendered the appeal fatally defective and the statute governing appeals (§ 16-37) specifies that the appeal shall be brought by a complaint in writing, "with a proper citation, signed by competent authority." The citation thus required is a command to an officer to summon the defendant to appear in court to answer the complaint. The lack of a citation constitutes more than a circumstantial defect. See *Village Creek Homeowners v. Public Utilities Comm.*, 148 Conn. 336 (1961).

12. Collusion between a party's attorney and the adverse party is a species of FRAUD for which relief may be obtained. (Citations omitted).

13. For the above stated reasons, petitioner respectfully requests that a writ of mandamus [or "and in the alternative a writ of prohibition or writ of mandamus"] issue out of this court directed to the respondents requiring [them] to.

RELIEF SOUGHT

1. Where United States Government Contractor's entry on plaintiff's land, effectively appropriated lands in connection with and pursuant to congressional authorization under 49 U.S.C. § 44502, were authorized acts of government and constituted "taking" by the United States of plaintiff's Real Estate and Vested Rights; in addition to taking of easements of the air space, analogous to *United States v. Causby*,

328 U.S. 256 (1946), giving rise to obligation to pay owner fair rental value (compensation) from date of taking where the government policy has continually been to negotiate 20-year leases, in lieu of acquiring the fee, [RELIEF] sought under the Fifth Amendment is that negotiations [must] transpire with the owner and not the trespasser.

2. The usual rule being that if the United States (not the state) has entered into possession of subject property, it is that event which gives rise to the claim for compensation and fixes the date as of which the land is to be valued and the government's obligation to pay interest accrues; NOTWITHSTANDING any pleas of 1955 Grant Agreements of which the owner was never a party to; NOTWITHSTANDING any pleas of LEASES between the co-conspirator and trespasser; NOTWITHSTANDING the fact there was [never] the establishment and written offer of just compensation as mandated by 49 C.F.R. § 24.102(d), [RELIEF] sought under the Tucker Act (Docket 02-301 L) and DENIED, the common-law writ of mandamus, as codified in 28 U.S.C. § 1361, is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty. See *Kerr v. United States District Court,* 426 U.S. 394, 402-403, 96 S.Ct. 2119, 2123-2124, 48 L.Ed.2d 725 (1976); *United States ex rel. Girard Trust Co. v. Helvering,* 301 U.S. 540, 543-544, 57 S.Ct. 855, 857, 81 L.Ed. 1272 (1937).

RELIEF in case at bar by mandamus to VACATE AND REMAND is pleaded where Federal and State courts have a clear nondiscretionary duty under the Due Process Clause, at a minimum, requires that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. U.S.C.A. Const. Amend. 14.

3. Relief in case at bar by mandamus to vacate – REMAND – vacature of attachments is pleaded where the government – in BAD FAITH – has continually, deliberately relied on the egregious constitutional misconduct of the agent to – not paying – a dime. Citing *Shoemaker v. United States,* 13 S.Ct. 361, 375 (1893): "That the government is bound to make just compensation for whatever it shall take from the individual is undoubted; and in the words of the Supreme Court in *Great Falls Manufacturing Co. v. Attorney General,* 124 U.S. 596, 8 S.Ct. 631 (1888): 'It is to be assumed that the United States is incapable of BAD FAITH, and that Congress will promptly make the necessary appropriations whenever the amount of compensation has been ascertained in the mode prescribed.'" Citing *Shoemaker, supra,* at 383: "The court has no discretion. It is the duty of the court to ascertain the value of the land embraced in the recorded map which is selected and condemned. If the court should decline to discharge that duty, the commission would be entitled to a MANDAMUS to compel it." Additionally at p. 383:

> "It is a universal rule that this proceeding shall in some form or other be subject to judicial supervision, so that the constitutional rights of the citizen shall not be infringed; that is, he shall have a hearing, and his property shall be fairly estimated, and not taken from him without adequate compensation being paid to him."

Dated: February 29, 2008

Respectfully submitted,

AUGUSTUS SIMMONS
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

App. 1

No. 163875

In the Supreme Court of Connecticut

AUGUSTUS J. SIMMONS,

Petitioner

vs.

CONNECTICUT DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION ROGIN, NASSAU & HIRTLE, ESQUIRES CONNECTICUT AIR GUARD JOHN MALONE, ESQUIRE,

Respondents

Augustus J. Simmons, the Above-Named Petitioner/Owner/Title Holder Respectfully Shows:

[SECOND] MANDAMUS APPLICATION

To the Honorable Judges of The Supreme Court of Connecticut

Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714
Petitioner/Owner/Title Holder

SECOND MANDAMUS APPLICATION

1) NO HEARINGS - FINALITY - ORDER 5/31/00

In further demand for relief by the owner of a MANDAMUS to REMAND – NOT for a "NEW TRIAL" – but, for a "DAY IN COURT" where the object, purpose, constitutional mandate of the Special Act #170 (1969) that materialized into *Simmons v. Wetherall,* Docket 163875 (1970) tort action, was, an additional mandate, reinforced by Title III (42 U.S.C. §§ 4651-4655) mandating that fair and just compensation in the form of DAMAGES, [SHALL] be addressed against two (2) null and void condemnations, dirty tricks by the dozen such as erecting a snow fence for ten (10) years across the frontage of Parcel "A" that the court ruled was not necessary for airport operations, pilfering of all building material from private property and using the cinderblocks to expand the Murphy Terminal Building, and Attorney Hirtle, R., of the Rogin-Hirtle Law Firm notifying the owner by phone, before filing an appearance on 12/13/77 that: the Rogin Law Firm was "NOT GOING TO TRY THE CASE", and, when challenged by owner's replacement counsel (Robert King) on January 4, 1978 as to why damages were not going to be addressed; the answer, as the record shows for NO hearings, NO litigation on the merits, NO decisions, NO eminent domain process initiated or instituted by the State Agent (C.D.O.T.), who, per 42 U.S.C. § 4628 was acting as agent for a FEDERAL PROGRAM; the absurd unconstitutional answer (defense) for not one (1) dollar compensation, in gross violation of the 5th

and 14th Amendments was: "He is an alcoholic, he will not know the difference."

Regards Finality and the Supreme Court Order of 5/31/00, Petitioner/Owner/Titleholder submits the United States Supreme Court interpretation of Finality that reads: "A 'Final Decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment", *Catlin v. United States,* 324 U.S. 229, 233, 65 S.Ct. 631, 633, 89 L.Ed. 911 (1945).

2) SUPREME COURT JURISPRUDENCE – TITLE

Petitioner/Owner/Titleholder excerpts from *Cavanaugh v. Richichi,* 100 Conn. App. 466 (2007). The State Supreme Court jurisprudence regarding the conveyance of Title beginning on page 468: "On appeal, it is the function of this court to determine whether the decision of the Trial Court is clearly erroneous . . . This involves a two part function: where the legal conclusions of the Court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision . . . " (citation omitted.) *Pandolphe's Auto Parts, Inc. v. Manchester,* 181 Conn. 217, 221-22, 435 A.2d 24 (1980). When reviewing the factual basis of a Trial Court's decision, our role "is to determine whether [those] facts . . . are supported by the evidence or whether, in light of the evidence and the pleadings in

the whole record, [they] are clearly erroneous . . . On appeal, [our] function . . . is limited solely to the determination of whether the decision of the Trial Court is clearly erroneous . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed . . . [W]e do not retry the facts or pass on the credibility of witnesses." (Citations omitted; internal quotation marks omitted.) *Wren v. MacPherson Interiors, Inc.*, 69 Conn. App. 349, 353-54-794 A.2d 1043 (2002).

Our jurisprudence regarding the conveyance of title is well established. The "[d]elivery of a deed coupled with intent by the grantor to pass title is necessary for a valid conveyance . . . The delivery of a deed includes not only an act by which the grantor parts with the possession of it, but also a concurring intent on the part of the grantor that it shall vest the title in the grantee . . . Both elements involve questions of fact for the trier of fact." (Internal quotation marks omitted.) *Young v. Young*, 78 Conn. App. 394, 398 n5, 827 A.2d 722 (2003); see *McCook v. Coutu*, 31 Conn. App. 696, 701, 626 A.2d 1321, Cert. denied, 227 Conn. 911, 632 A.2d 692 (1993); see also *Lomartira v. Lomartira*, 159 Conn. 558, 561, 271 A.2d 91 (1970).

3) IPSO-FACTO-VOID [CONDUCT-CLAIMS]

Wherein . . . The malicious, tortious, bad faith Rogin-Hirtle, Esq's. Law Finn, with no gun to their back or club to their head – [AGREED, SIGNED] – to take over the contingency fee arrangement of Atty. David Salzman of New Haven, CT, who exited from the practice of law, after, successfully litigating a judgment by Referee Shapiro, L. on Superior Court records on 1/17/77 under Docket #162923 that was [torpedoed, shanghaied on 12/13/77], and the owner had 'anted' up the contingency agreement to 38% toward anticipated hearings of the tort action under Docket #163875, and, with Title III of Federal Law (42 U.S.C. §§ 4651-4655) MANDATING DAMAGES (compensation) must (shall) be heard; MANDATORY on every state in the union by the Uniform Act (P.L. 91-646 (1971) . . . the FACT that Atty. Hirtle, R., [PHONE CALLED], before the ink was dry on the contract agreement to inform the owner the Rogin-Hirtle Law Firm . . . [WAS NOT GOING TO TRY THE CASE] . . . However, the record shows an appearance was filed on 12/13/77 to wreak havoc, plunder, – in concert and collusion with the State Agent – every active state and federal court case . . . The record shows a DISCHARGE (Ex. #4) on 12/23/77 . . . There is [NO RECORD] of the agent – C.D.O.T. – initiating, instituting any eminent domain process, of any nature, after 3/24/72 that would give the courts (State, Federal or Connecticut Supreme Court) subject matter jurisdiction, jurisdiction of the parties, or of the process . . . AND . . . this FACT was argued [by

the STATE] before the Superior Court, Hon. DuPont, A. presiding on 6/7/82 . . . A quarter of a century ago . . . " It is an acknowledged principle of . . . every court in the world, that not only the decisions, but everything done under the judicial process of courts not having jurisdiction are IPSO FACTO VOID." 14 U.S. (1 Wheat) 304, 364, 4 L.Ed. 97 (1816); *Chrysler Credit Corp. v. Fairfield Chrysler Plymouth. Inc.*, 180 Conn. 223, 229, 429 A.2d 487 (1980).

4) CITATION - PARTIES - PROCESS

With – [NO] – CITATION in evidence – or – on the record that notice or service was made on all necessary parties; with – [NO] – EMINENT DOMAIN CONDEMNATION . . . reinstituted . . . a third time upon the owner not entertaining a "ridiculous verbal offer" or "tendering any deeds"; where the record shows a discharge of the corrupt, malicious, tortious, private counsel (Rogin-Hirtle, Esq.'s) on 12/23/77 (Ex. #4); A second discharge on April 12, 1978; A legal withdrawal on April 19, 1978 (Ex. #6), with – [NO] – record of any proceedings under procedural statute C.G.S. § 8-129 (Ex. #15); The Connecticut Supreme Court could not, should not, have entertained, an appeal with [NO CITATION], [NO PROCEEDINGS] in evidence or on the record.

Applying the functions as detailed by the Court in #2 of this SECOND MANDAMUS APPLICATION . . . It was grossly UNCONSTITUTIONAL (where a Federal Taking and Program is at issue) for the

State's highest court to [try] – or – declare – or – claim a judgment (stipulated or supplemental), where, on December 23, 1977, ten days after filing an appearance as Owner/Titleholder's Counsel, the Rogin-Hirtle Law Firm was charged with a MISPRISION OF A FELONY via a DISCHARGE. (Ex. #4).

Applying the functions as detailed by the Court in #2, and, this very same court having ruled on the very same subject matter in 160 Conn. 492 (1971) that: "The prescribed method of taking must be followed", and, Where the U.S. Supreme Court in *Standard Oil v. Missouri,* 224 U.S. 270, 32 S.Ct 406, 56 L.Ed. 760 (1912) made exceedingly clear the Court [cannot] by "IPSE DIXIT" – [TRANSMOGRIFY] – a private tort action into a public eminent domain action . . . RELIEF, pursuant to the mandate of the 5th and 14th Amendments of "Nor shall private property be taken without just compensation", mandates compliance with the MANDAMUS APPLICATION of a REMAND and wiping the record clear of the State Reviewing Court acting without jurisdiction of the Subject Matter, the Parties, or the Process.

5) <u>MISPRISION OF A FELONY</u> – <u>OBSTRUCTION OF JUSTICE</u> – DESTROYING EVIDENCE

PLAINTIFF/OWNER having brought several causes of action to both the State and Federal Courts seeking basic relief of "LEGAL COMPENSATION" where federal participation is apparent by a federal

taking, a federal project of substantial public importance is at issue; federal funds had been appropriated to the project in 1955, but, never paid or deposited with the Court (See Ex. #11); The paltry $15,000.00 deposit by the State in concert with the two condemnation attempts was returned to the Treasury; all condemned property reverted back to the owner on 3/24/72, putting it back on the TAX LIST . . . The basic issue [FEDERAL QUESTION] before the Court (IS) (WAS) (REMAINS): DOES THE FEDERAL REGULATIONS AND STATUTES PROMULGATED PURSUANT TO THE UNIFORM ACT OF 1970, P.L. 91-646, 84 STAT 1894, BECOME EFFECTIVE IMMEDIATELY.

In the case of *Simmons v. Wetherall,* #163875 there is the obvious question as to (1) The constitutionality of the state action – or [inaction], and (2) whether the officials or parties involved have complied with Federal Regulations and State Statutes, and (3) where land that was not acquired legally by failed condemnations, was attempted subversively by destroying evidence and obstruction of justice that was MISPRISION OF A FELONY by state officials, acting in concert and collusion with plaintiff's discharged and legally withdrawn private counsel (Rogin-Hirtle, Esq.'s); which sub-rosa, plundering activity, was rejected by the Superior Court on August 30, 1979 (Ex. #7 & 7a) – BUT – given a stamp of approval (constitutionality) by the Connecticut Supreme Court under *Simmons v. Wetherall,* #163875, 180 Conn. 587 (1980), a case that never had a hearing, no

pleadings, no day in court, no written statements, no notices or service to interested and necessary parties, no ascertainments of "fair and just" compensation as guaranteed by the 5th and 14th Amendments, AND, 49 C.F.R. section 24.102 (L) of BASIC ACQUISITION POLICIES (Ex. #3) regards Inverse Condemnation reads: "If the agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property."

6) <u>OBSTRUCTION OF JUSTICE</u> – <u>DESTROYING EVIDENCE</u>

a) The Rogin-Hirtle Law Firm, having retracted from "trying the case on its merits," yet, filing an appearance for the sole purpose of – plundering – Docket #162923 that was an ejectment action against the Federal Agency acting in bad faith by engaging in leasing with the TRESPASSER (State Agency).

b) Wherein the judgment awarded rental for the years of 1964-1969; plaintiff was to be reimbursed for appraisal and engineering fees and the malicious, tortious private counsel could not, constitutionally and by the Practice Book, DEFEAT, DENY, MAKE INEFFECTIVE, a valid judgment on court records twelve months prior; obstructing justice in the most basic sense of ... CONTINUING COMPENSATION DEPRIVATION ... where FINALITY was determined

on or about July 1, 1962 by the invasion, appropriation, TAKING by the United States, without condemnation, BUT, cannot do so without payment of compensation.

c) Wherein the discharged and legally withdrawn private counsel, in tandem and collusion with the trespassing state (agent) who never instituted any mesne process, place a 1.12 acre parcel A/K/A Parcel "D" of rerouted federal-aid highway Rte. #20 on 6/5/78 in [IPSE DIXIT] manner on the land records of an [incomplete] taking in 1957 . . . without one dollar compensation, or interest, or hearing, or put before the Court as required by statute . . . (IS), (WAS) FELONIOUS CONDUCT that . . . MANDATES a REMAND for compliance with the 14th Amendment for a determination of INTEREST and value that was applied to the partial taking of .033 acre in 1957, as shown on Town of East Granby land records.

d) Wherein the discharged and legally withdrawn private counsel, in tandem and collusion with the trespassing state (agent) who never instituted any mesne process . . . NEVER determined or ascertained just or fair compensation as of date of taking by the United States . . . in violation of BASIC ACQUISITION POLICY MANDATE under 49 CFR § 24.102 mandating appraisals – BEFORE – making an offer.

e) Wherein the . . . plundering . . . by the discharged counsel included a scheme or artifice to

nullify two (2) active federal court cases, one of which was a "1983" Civil Rights Action (472 F.2d 509 (1973)) reported favorably, but remanded until Docket #162923 was concluded, and Docket #162923 reported favorably to the Superior Court . . . was also nullified – in direct violation of the Fifth and Fourteenth Amendments . . . Wherein the Connecticut Supreme Court – applies – assigns – dignifies – decrees – such gross [UNCONSTITUTIONAL NULLIFYING ACTIVITY] – A Judgment, A Stipulated Judgment, A Supplemental Judgment to – shield – cover-up – shelter the Federal Taking by the United States, and, the continual [BAD FAITH] "LEASING" by the two trespassing bureaucracies.

f) Without question, the evidence [RECORD] must show a *United States v. Simmons* or *State of Connecticut v. Simmons* for an effective, legitimate, constitutional acquisition of the subject real property with a federal installation thereon.

g) Condemnation is a means by which the sovereign may find out what any piece of property will cost. *Danforth v. United States,* 308 U.S. 271, 284, 60 S.Ct. 231, 236, 84 L.Ed. 240 (1939).

h) Wherein the Connecticut Supreme Court has expressed the position of the United States Supreme Court relative to a governmental regulation or action that has deprived a claimant of his property without just compensation was illuminated to justify their review was [fact-dependent] in *Gil v. Inland Wetlands Agency,* 219 Conn. 404 at page 406 (1991) that reads:

As the United States Supreme Court has observed, whether a claim that a particular governmental regulation or action taken thereon has deprived a claimant of his property without just compensation is an "essentially ad hoc factual inquir[y]." *Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1977), *reh. denied,* 439 U.S. 883, 99 S.Ct. 226, 58 L.Ed.2d 198 (1978); see also *Keystone Bituminous Coal Assn. v. DeBenedictis,* 480 U.S. 470, 473-74, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987); *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 395, 413, 43 S.Ct. 158, 67 L.Ed. 322 (1922).

[NO] FACTS are in evidence or on the record in *Simmons v. Wetherall,* #163875 which is substantiated by (Ex. #7 & 7a) dated 8/30/79, further substantiated by the return of illegal funds to the Treasury or 10/15/91 (Ex. #9); wherein it is an actual FACT there was – NEVER – any determination, ascertainment or hearings against the constitutional requirement of damages and just and fair compensation dating back to 7/1/62, and, the novel explanation (defense) on January 4, 1978 from plaintiff's former counsel (Rogin, E., Sr.) who was discharged on 12/23/77, and, when questioned by replacement counsel (King, R., Esq.) as to why no hearings – the reply: HE IS AN ALCOHOLIC, HE WILL NOT KNOW THE DIFFERENCE.

i. Where our U.S. Supreme Court has observed and ruled that: "'The owner is protected by the rule that title does not pass until compensation has been

. . . ascertained . . . and paid . . .'" *Albert Hanson Lumber Co. v. United States,* 261 U.S. 581, 587 (1923). The government – cannot – defer the deposit of funds in court in order to compel an agreement on the price of the property (See Ex. #13) – for forty-five (45) years.

Federal Regulation 42 U.S.C. § 4651(7) that clarifies the Fifth Amendment requirement states: In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

7) 5th & 14th AMENDMENT COMPENSATION

Wherein . . . The State Agent (C.D.O.T.) took some [numbers] off the wall . . . off the clock on the wall to make a verbal offer . . . without initiating or instituting any process – in lieu of the mandatory constitutional mandate of establishing of value – [as of date of taking] – by the United States in the year of 1962 – by appraisals or LODESTAR . . . BEFORE . . . making an offer, and, INTEREST must be considered where the United States has never offered or deposited a DIME . . . It is a crystal clear FACT the Connecticut Supreme Court sanctioning, putting its stamp of approval on such felonious conduct makes the reviewing court a – CO-CONSPIRATOR – of a scheme or artifice to deny fair and just compensation.

8) SIMMONS V. WETHERALL, #163875

Wherein . . . It is an UNDISPUTABLE FACT Docket #163875 is a private tort action . . . It is [NOT] a state action . . . It is an UNDISPUTABLE FACT there [was not] a single hearing, a day-in-court against the extraordinary injury, harm, expense of the concurrent null and void condemnation[s] during the first ten (10) years of occupancy and use; It is an UNDISPUTABLE FACT that the State Agency prevailed upon the Legislative Branch of the General Assembly to incorporate, in 1971, C.G.S. § 48-17 a, b, c to correspond with Title III of Federal Regulations (42 U.S.C. §§ 4651-4655) – mandating – HEARINGS IN DAMAGES for fair and just compensation . . . It is an UNDISPUTABLE FACT the reviewing Connecticut Supreme Court . . . CANNOT . . . [sua sponte] after pending for thirty (30) years (1970-2000) to FORECLOSE, DEPRIVE, DENY, the guaranteed just compensation under the Fifth and Fourteenth Amendments with its order of 5/31/2000 (Ex. #10) of [No more pleadings under #163875].

9) ORDER

Wherein . . . It is an UNDISPUTABLE FACT that under our American Jurisprudence . . . Compensation must be paid from . . . DATE OF TAKING . . . It is an UNDISPUTABLE FACT that where the taking was a Federal Taking . . . for a Federal Project, Federal Rules and Regulations apply – notwithstanding any other State Law . . . It is an UNDISPUTABLE FACT

that when the C.D.O.T. was going to make an offer in December, 1977, Compliance with the basic acquisition practices [49 C.F.R. § 24.102 (Ex. #3) was mandatory – BEFORE – making an offer, in writing. It is an UNDISPUTABLE FACT, acknowledged by the State on 6/7/82 in Superior Court, that, [NO] state appraisals or ascertainments of fair and just compensation were ever made as of Taking Day – or any other day ... It is an UNDISPUTABLE FACT that since 3/24/72, neither the State or Federal Agencies have instituted any Eminent Domain Process in any State or Federal Court to acquire rights to the subject property, and, clear the land records of lien-holders (necessary parties).

Wherefore: Petitioner, Owner, Titleholder – pleads, orders, demands the Connecticut Supreme Court remand to the Superior Court, pursuant to the Fifth and Fourteenth Amendments ... The production of a WRITTEN STATEMENT based on appraisals – or – LODESTAR.

Wherefore: Owner, Titleholder – pleads, demands the Connecticut Supreme Court remand to the Superior Court – for execution – of the judgment of Referee Shapiro (1/17/77) of Docket #162923, wherein the felonious, tortious conduct of the Rogin-Hirtle Law Firm was to literally relegate the thirty (30) day trial to the – ASH CAN.

Wherefore: The Connecticut Supreme Court remand to the Superior Court, concurrent with its decree of 160 Conn. 492 (1971) of identical circumstances, an

ORDER of DELETION from the land records, matters that were never submitted to Superior Court regards Practice Book and constitutionality.

Respectfully submitted,

/s/ Augustus Simmons

Augustus Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATE OF SERVICE

Petitioner/Titleholder/Owner hereby certifies copies of this [SECOND MANDAMUS APPLICATION] to the Supreme Court of Connecticut – in support and further amplification of Demand to Remand and VACATE ATTACHMENTS dated November 10, 2005, have been mailed, postage prepaid, this 23rd day of October, 2007, to all parties listed below.

Marion C. Blakey
Federal Aviation
Administrator
800 Independence Ave., S.W.
Washington, D.C. 20591

John Malone, Esq.
State Attorney's Office
111 Phoenix Ave.
Enfield, CT 06082

Paul D. Clement
Solicitor General
950 Pennsylvania Ave., N.W.,
Room 5614
Washington, D.C. 20530-0001

Paul Pernerewski
Assistant Attorney General
P.O. Box 317546
Newington, CT 06131-7546

Ralph Carpenter,
Commissioner
Connecticut Department
of Transportation
2800 Berlin Turnpike
P.O. 317546
Newington, CT 06131-7546

Chief Clerk
Superior Court
95 Washington Street
Hartford, CT 06106

Rogin, Nassau, Caplan,
Lassman & Hirtle, Esq.'s
City Place I
Hartford, CT 06106

Major George Warrall
Connecticut Air Guard
360 Broad Street
Hartford, CT 06105

/s/ Augustus Simmons
Augustus Simmons
P.O. Box 1
Windsor, CT 06095
(860) 569-6714

Date returned: 10-23-07 ~~SC/AC~~ # 163875

Augustus J. Simmons v. Wetherall

The following papers: (Second) Mandamus Application

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are being returned per P.B. §62-7 for the reason(s) indicated:

1. Originals are needed and/or papers are not signed.
2. Certification of service per P.B. §62-7, Motions require certification on the original and all copies.
3. Exceeds number of pages allowed by P.B. §_____.

4. Our records do not disclose an appeal captioned as the enclosed.

5. Motion returned – not in compliance with P.B. §66-2 (format); and/or §66-3 (font & margins). Certification should contain reference to §66-3 and should be on the original and all copies.

6. Requires permission of the court.

7. Requires permission of the court. There is no provision in the practice book which provides for the filing of such a document.

8. Case withdrawn/dismissed.

9. An endorsed copy of the appeal form is required. P.B.§63-3.

10. Failure to pay the $70.00 filing fee as required by C.G.S. § 52-259c.

    Fees are payable in the trial court. The Appellate Clerk's Office does not accept cash, checks or money orders.

11. Motions to Withdraw Appearance require reasonable notice be given to the party being represented. See P.B. §62-9.

12 Brief returned – not in compliance with P.B. §67-2 (Only Arial, or Univers type is allowed.)

13. Electronic version of transcript may be filed by court reporter/monitor only.

14. Other See attached order dated May 31, 2000

FOR INFORMATION ON THE CONNECTICUT RULES OF APPELLATE PROCEDURE SEE:

http://www.jud.state.ct.us/pb.htm and
http://www.iud.state.ct.us/Publications/appellatehandbook.pdf

ALL DOCUMENTS MUST BE RECERTIFIED TO ALL COUNSEL AND PRO SE PARTIES WHEN REFILED.

APPELLATE CLERK'S OFFICE
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HARTFORD, CT 06106
860-757-2200 Fax 860-757-2217

STATE OF CONNECTICUT

SUPREME COURT

NO. HHD CV70-0163875S

AUGUSTUS J. SIMMONS

v.

HORACE B. WETHERALL ET AL. MAY 31, 2000

ORDER

THE MOTION OF THE PLAINTIFF, FILED MAY 1, 2000, TO VACATE, HAVING BEEN PRESENTED TO THE COURT, IS HEREBY ORDERED **DISMISSED.**

IT IS FURTHER ORDERED THAT THE PLAINTIFF IS HEREBY PROHIBITED FROM

FILING PLEADINGS IN THIS COURT THAT ARE RELATED TO DOCKET NUMBER CV70-0163875.

BY THE COURT,
/s/ Francis J. Drumm
CHIEF CLERK

NOTICE SENT: MAY 31, 2000
AUGUSTUS SIMMONS, PRO SE
PAUL K. PERNEREWSKI,
ASSISTANT ATTORNEY GENERAL
ROGIN, NASSAU, CAPLAN, LASSMAN & HIRTLE
CLERK, HARTFORD J.D.
HON. JOHN J. LANGENBACH

App. 21

No. 163875

In the Supreme Court of Connecticut

AUGUSTUS J. SIMMONS,

Petitioner

vs.

CONNECTICUT DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION ROGIN, NASSAU & HIRTLE, ESQUIRES CONNECTICUT AIR GUARD JOHN MALONE, ESQUIRE,

Respondents

Augustus J. Simmons, the Above-Named
Petitioner/Owner/Title Holder
Respectfully Shows:
MANDAMUS APPLICATION

To the Honorable Judges of
The Supreme Court of Connecticut

Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714
Petitioner/Owner/Title Holder

MANDAMUS APPLICATION

Petitioner claims a right under the legislative enacted Special Act (#163875); under the Fifth and Fourteenth Amendments to the United States Constitution; under Paramount Federal Law where the initial "taking" was by the United States on or about July 1, 1962 with the invasion, appropriation, occupancy and use of the air space with electronic instrumentation installed on the surface of subject real property – without notice or compensation * * * upon reliance that the STATE would acquire the fee, and, LEASE to the United States the necessary land interests for its instrumentation.

Where it is [undisputable] that the owner never entertained a "verbal offer" or tendered any deeds and it is equally [undisputable] that the TRESPASSER'S [Never] initiated any condemnation proceedings, or other proceedings, of any nature after March 24, 1972 that would give the courts subject matter jurisdiction, IS-WAS-CONTINUES a clearly unconstitutional exercise * * * MANDAMUS is reserved for really extraordinary causes * * * as in case at bar * * * directing the JUDGES of the State Supreme Court to REMAND to Superior Court for constitutional compliance with the Due Process and Compensation Clauses of the 5th and 14th Amendments pursuant to a "Federal Taking"; Wipe the unconstitutional Supreme Court decree (180 c 587 (1980)) off the record; Wipe the land records clear where no proceedings were instituted; No hearings ever had or permitted; No judgment file or record is

in evidence with the Superior Court below; Where the JUDGES of State Supreme Court acted as CO-CONSPIRATOR(S) in sanctioning the nullification of Referee Shapiro's judgment (Ex. #16) under Docket #162923 pertaining to illegal and unlawful [LEASES], filed with the Superior Court on January 17, 1977; Where the judge(s) of State Supreme Court were pronouncing a decree – via – petitioner's tort action (#163875) against a "MYTHICAL" JUDGMENT, "hatched" months after withdrawal in the private office of Rogin, E., Sr., Esq. with no parties present; Attaching the name of Referee Shapiro, L., that was [FORGERY], as evidenced by (Ex. #8) dated July 18, 1980; Enlisting the Superior Court Clerk, Thomas Abraham, to certify that the documents are on file in office of Superior Court when there was [NEVER] any submissions as verified by Chief Clerk, Lucian Jachamovitz, (Ex. #7 & 7a) – as further verified by (Ex. #9) of all funds returned to the Treasury on December 23, 1991, based on *Shelton v. Wolthausen,* 80 C. 599 (1908).

A. STATEMENT OF FACTS

1. The record shows two (2) condemnation attempts by the State of Connecticut (C.D.O.T.) pursuant to a 1955 Grant Agreement (Ex. #11), where the government policy was (is) to not take the fee – but – enter into long-term leases.

2. The Tort (Damages) Action (#163875) was filed with the Superior Court on January 2, 1970 and

with the Connecticut Supreme Court ruling that the second condemnation was also null and void, and, so recorded on the land records on March 24, 1972 without addressing substantial damages, forcing the landowner who was [DISPLACED] ten years prior by the United States, to again pay real property taxes with the federal instrumentation thereon.

3. It is an [undisputable] fact that after the court reverted subject real properties to the Owner on March 24, 1972 at Vol. 52, p. 242-3 of Town of East Granby Land Records, the State Transportation Department and the Federal Agency became TRESPASSER'S – AB INITIO as of March 25, 1972, have been mutually trespassing for the past thirty-five (35) years; did not have any right or authority to parcel out acreage to Air National Guard in February 1991 and are continuing to be trespassers until such time as mesne process (condemnation) is instituted.

4. It is an [undisputable] FACT that where the "taking" was by the United States for a Federal Project "the use to be made of the land taken is necessarily a factor to be considered in the application of the rule"; the Statutes and Regulations enacted pursuant to the UNIFORM Real Property Acquisition Act (P.L. 91-646 (1971)) – apply immediately – imposing numerous constraints upon [both] the State and Federal governments in order that such displaced persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

B. FACTS – [LEASES]

5. It is a fact that any agency or government body that shall form a combination (agreement-lease) to avoid paying compensation shall be deemed guilty of a [CONSPIRACY TO DEFRAUD].

6. It is a FACT the United States (F.A.A.) is a person within the meaning of the Fifth Amendment of the Constitution of the United States.

7. It is a FACT that * * * notwithstanding the failed condemnation attempts that . . . by reason of the CO-CONSPIRATORS (State of Connecticut – U.S.A.) . . . grossly offending against the 5th and 14th Amendments of the Constitution of United States and willfully and flagrantly abused and misused government power against the individual landowner with continued [LEASING] . . . in restraint of Compensation and Damages guaranteed by the 5th and 14th Amendments.

8. It is a FACT the United States – NEVER – made an attempt to lease from the owner – after reverting of ownership in 1972 . . . despite having done so several times at airports throughout the northeast region – including the Groton-New London Airport in Connecticut.

9. It is a FACT that the failure * * * of the [blank] party plaintiff/defendant/trespasser (C.D.O.T.) to effect service of a writ of summons . . . on any parties . . . resulting in no party becoming a party to trial court proceedings . . . that never transpired;

petitioner/plaintiff/owner, citing *General Motors Acceptance Corp. v. Pumphrey,* 13 Conn. App. at 229 (1980) reads: Our Supreme Court long ago stated that "The judgment of a court of even general jurisdiction cannot affect a person who had no notice to appear, as to him the proceedings are *corum non judice," Parsons v. Lyman,* 32 Conn. 566, 577 (1863).

10. It is a FACT that defendant, (C.D.O.T.), [cannot] transmogrify plaintiff's/petitioner tort action #163875 into an eminent domain action by hocus-pocus circus style fashion. See *Standard Oil v. Missouri,* 32 S.Ct. at 409 (1913).

11. It is a FACT that the defendant/trespasser (C.D.O.T.) contends that plaintiff/defendant/landowner (Simmons) consented to and conferred the right to assert in personam jurisdiction – by agreement – on January 4, 1978. The short answer to this claim is that no such agreement appears from the record or as an Exhibit. In addition, the Connecticut Supreme Court decreeing in *Simmons v. State,* 160 Conn. 492 (1971), law of the case, that jurisdiction cannot be conferred by consent, waiver, silence, or agreement. In addition, "the parties and their case must be brought before the court and this is accomplished by the use of process." 62 Am. Jur. 2d Process § 3.

12. It is not only a FACT – "It is, of course, [essential] to the validity of any judgment that the court rendering it should have had jurisdiction, not only of the parties, but of the subject matter." *Chicago B. & O.R. Co. v. Chicago,* 166 U.S. 234, 247, 41 L.Ed.

983, 988, 17 S.Ct. Rep. 581; *Standard Oil v. Missouri,* 224 U.S. 270, 32 S.Ct. 406, 56 L.Ed. 760 (1912).

13. It is a fact the State of Connecticut not having instituted any proceedings after March 24, 1972; not initiating any mesne process for jurisdiction of the res; No Notice, Service of Process – or – return of service to the Superior Court for jurisdiction of the parties; No hearings or a day-in-court on the merits; Where Congress in the ALL WRITS ACT meant only in the exceptional case where there is clear abuse of discretion or "USURPATION OF POWER" . . . of the sort held to justify the writ in *DeBeers Consolidated Mines v. United States,* 1945, 325 U.S. 212, 217, 65 S.Ct. 1130, 1133, 89 L.Ed. 1566 . . . THIS IS SUCH A CASE.

D. FACTS – [COMPENSATION]

14. It is a Constitutional FACT that the time of the invasion is the event which gives rise to the claim for compensation and fixes the rate as of which the land is to be valued – irrespective of failed condemnation attempts and reverting of ownership. *United States v. Dow,* 357 U.S. 17, 22, 78 S.Ct. 1039, 1044, 22 L.Ed.2d 1109 (1958).

15. It is a Constitutional FACT that [INTEREST] at a proper rate "is a good measure by which to ascertain the amount so to be added" when the full equivalent of that value is not paid contemporaneously with the taking *Seaboard Airline R. Co. v. United States,* 261 U.S. 299 (1923).

16. It is a Constitutional FACT that petitioner is entitled to recover reasonable attorney, appraisal, engineering fees, taxes, and costs, that were substantially greater than the value of the land under the mandatory Paramount Federal Law and C.G.S. § 48-17a. *Drakes Bay Land Co. v. United States,* (Ct. Cl. No. 275-66).

17. It is a Constitutional FACT that award of [DAMAGES] begins at instant of intrusion; that the Judicial Department must comply with the legislative mandate (Special Act #170 (1969)); that Referee Shapiro had dates scheduled for [HEARINGS] (Ex. #14); that the nullifying of all hearing dates on first day of appearance (December 13, 1977) by the Rogin-Hirtle Law Firm – denying a Day-in-Court was the most gross violation of the Due Process Clause of the 5th and 14th Amendments; that the sanctioning by the Connecticut Supreme Court of such outlandish COMPENSATION DEPRIVATION with its decree at 180 Conn. 587 (1980) must be reversed for attempting to – dignify such gross constitutional violation – a JUDGMENT.

18. It is a FACT that [NO CONSTITUTIONAL OFFER] could be made, verbal or written, without compliance with 49 C.F.R. § 24.102 (basic protections Ex. #3), ascertaining, appraising values as of date of taking – BEFORE NEGOTIATIONS.

19. It is a FACT, as the record shows, an appearance was filed by Rogin Law Firm on December 13, 1977, [NOT] to "try" or "conclude" the active cases

in both State and Federal Courts – INSTEAD – in collusion and conspiracy with the State Agency, a 180° turnaround to [DESTROY], [DEACTIVATE], [NULLIFY], ALL scheduled hearing dates for damages under #163875 (Ex. #14); [DESTROY] the 2nd Circuit Court of Appeals remand (472 F.2d 509); [NULLIFY] the 30 day trial judgment under Docket #162923 by the honest and reputable Referee Shapiro, L. (who never submitted any decree, judgment, ruling to the Superior Court under Docket #163875); where the express purpose of such malicious, tortious, subversive conduct was to [DENY] the property owners a meaningful opportunity to be heard; "that a hearing required by Due Process, under the 5th and 14th Amendments does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." *Boddie v. Connecticut,* 401 U.S. 371, 379; *E.G. Bell v. Burston,* 402 U.S. 535, 542; *Wisconsin v. Constantineau,* 400 U.S. 433, 437; *Goldberg v. Kelley,* 397 U.S. 254; *Armstrong v. Manzo,* 380 U.S. at 551; *Mullane v. Central Hanover Tr. Co.,* 339 U.S. 306 at 313.

E. FACTS – [ATTACHMENTS]

20. It is a FACT under Connecticut Practice, compliance with C.G.S. § 52-57 is mandatory and the failure to return the process to court within the time limited renders the attachment proceedings fatally defective. *Jepsen v. Toni Co.,* 20 C.S. 287; *Daley v. Police Commissioners,* 133 Conn. 716, 719; *Hartley v.*

Vitiello, 113 Conn. 74, 79; *Safford v. Morris Metal Products,* 99 Conn. 372, 376.

21. It is a Constitutional Fact that the Connecticut Supreme Court made exceedingly clear in *Simmons v. State* 160 Conn. 492 (1971) that the "Prescribed method of taking must be followed." It (State Supreme Court) also illuminated the fact in *Simmons v. State,* supra, at 494n of the treatise of *Karp v. Urban Redevelopment Commission,* 162 Conn. 525 at 527 cited: "The docketing of the statement of compensation in the Clerk's Office of the Superior Court did not originate a civil action." Where, the rejected "verbal offer" (that was considerably less than claimed), [COULD NOT – WAS NOT] docketed with the Superior Court – [DID NOT] originate a civil action – even if it was docketed – makes very clear the fact that the Connecticut Supreme Court was acting with no process originating by the State Agency * * * for reasons that it would illuminate the Unlawful, Illegal, Unconstitutional [LEASING] between the two (2) bureaucracies.

F. STATEMENT OF ISSUES AND RELIEF SOUGHT

Where the ISSUES necessary to be addressed is more like a – laundry list – wherein the case at bar can [NEVER] be resolved without the relief of A-DAY-IN-COURT, and, the litigants (owner and necessary parties) can never have their day-in-court when there was [NEVER] any "action", "mesne process", "proceedings", of any nature or form, by the State Agency

(Connecticut Department of Transportation) originating, initiating, instituting any process after March 24, 1972 (date of reverting ownership).

I. Docket #163875, Simmons v. Wetherall

Citing *Gaines v. New York,* 215 N.Y. 533, 540, 109 N.E. 594 (1915) Judge Cardozo said: "The [saving] statute is designed to insure to the diligent suitor the right to a hearing in court till he reaches a judgment on the merits. Its broad and liberal purpose is not to be frittered away by any narrow construction. The important consideration is that by invoking judicial aid, a litigant gives timely notice to his adversary of a present purpose to maintain his rights before the courts."

II. LEASES

Without question, the most important issue in this forty-five (45) year old extravaganza (1962-2007), that is highlighted under section [B] of facts; wherein the Rogin Law Firm initially agreed under a 38% contingency contract to pursue what in 1977 had been, at that time, fifteen (15) years of occupancy and use – without compensation; the RELIEF sought, prayed for, demanded that after forty-five (45) years of FREE-LOADING the United States negotiate a LEASE with the Owner/Title Holder – OR – DIRECT ALL FLIGHTS TO RUNWAYS OTHER THAN 6-24 for ingress or egress.

Without question, Congress intended the "UNIFORM ACT" [42 U.S.C. § 4601] applies equally to the government agency as well as the state agency.

Petitioner/owner is not a member of Al Qaida or a "nut" running around from eating too many peanuts, but, making a straight forward demand under our American Jurisprudence of PAY – OR YOU DON'T FLY!!!

III. COMPENSATION

Where petitioner/owner's stand, claim, argument for fair and just compensation, guaranteed by the 5th and 14th Amendments is non-argumentative; in fact, is mandatory, RELIEF by compliance with 49 C.F.R. § 24.102 (Ex. #3) is not only prayed for; it is demanded of both the Federal and State Agencies of their respective obligations under the Constitution.

IV. DUE PROCESS – JURISDICTION

The ISSUE of JURISDICTION can be raised at any time, regardless of form, was raised at page 10 and 11 of Appeal #9200 in 1979 to the Connecticut Supreme Court – and disregarded.

Lack of subject matter jurisdiction and of the parties by Connecticut Courts was argued by the State (Atty. General's Office) on June 7, 1982 before Hon. DuPont, A.; the record shows the "scab verbal offer" transferred back to the Treasury on December 23, 1991 making exceedingly clear the Connecticut

Supreme Court – WAS NOT – upholding the rudiments of fair justice.

V. [U.R.A.] 1971 Uniform Real Property Acquisition Act

The ISSUE as to whether the Statutes and Regulations promulgated pursuant to the above congressional mandate apply to the case at bar with a Federal Taking and Project is an unequivocal [YES] – petitioner/owner is entitled to EQUAL PROTECTION OF THE LAW – that RELIEF by a right to a HEARING in court till it reaches a judgment on the merits (as expressed in numeral I) – CANNOT be FRITTERED AWAY.

VI. INTENT TO DEFRAUD

This ISSUE was ominous from the opening bell with the depiction under #19 of FACTS that were so unconstitutional and repulsive that even a DISCHARGE (Ex. #4) did not stop or curtail the malicious, tortuous conduct and the only RELIEF, were he (Rogin, E., Sr.) still alive, would have been a public hanging -H-U-N-G-, not with dignity like Saddam Hussein, but, *Italian Style,* by his collunes.

VII. ATTACHMENTS

The ISSUE regards attachments is: Did the discharged, legally withdrawn private counsel (Rogin-Hirtle, Esq's.) (Ex. #4 & #6) have any right, authority,

jurisdiction to – [RE-ENTER] the fray and in collusion and conspiracy with the State Agency who never originated any proceedings or process of any nature, never enlisted a sheriff or indifferent person to serve several lien-holders; made two (2) trips to Town Clerk of East Granby, Connecticut. First, on June 2, 1978, with the [FORGED] signature of Referee Shapiro and again on June 5, 1978, two (2) separate document dated June 2, 1978, one of which was labeled supplemental judgment claiming the parties appeared on defendants' motion for execution of judgment.

Petitioner's demand for Relief is for DISSOLUTION of ATTACHMENTS per order of a Superior Court Judge, which court has exclusive jurisdiction of real property matters; has acted on August 30, 1979, denying funds. Hon. Daly, J. (Ex. #7 & 7a); has acted on disallowing funds on June 8, 1982, Hon. DuPont, A.; has acted on returning funds to Treasury on December 23, 1991, Hon. Aronson, J. (Ex. #9); has – NOT – acted on recommending remand to Superior Court on July 18, 1980, Referee Shapiro, L. (Ex. #8); the owner has acted with a DISSOLUTION OF ATTACHMENTS pursuant to C.G.S. § 52-327 on the public land records and Superior Court Clerk's Office under Docket #163875 on December 1, 1996 (Ex. #2).

G. STATEMENT WHY WRIT SHOULD ISSUE

VIII. Where the [STATE] was in agreement with petitioner/owner, a quarter century ago (June 7, 1982), that CONNECTICUT COURTS (including the

inferior court of Rogin-Hirtle, Esq.'s – Shapiro, L. (December 13, 1977)) lacked [JURISDICTION] of the subject matter, the parties, and the process; the frittering away of dates for hearings (Ex. #14) against [DAMAGES] in direct violation of PARAMOUNT FEDERAL LAW under 42 U.S.C. §§ 4653, 4654, 4655; which exercise was anointed with a [JUDGMENT] that is the farce of the century, and, is the rare and exceptional case where [MANDAMUS] is appropriate to remove the bureaucratic STATE SUPREME COURT sanctioning of such unorthodox, unconstitutional practices against a Federal Taking and Federal Project; acting under *Simmons v. Wetherall*, #163875 (180 Conn. 587) that is plaintiff's tort action and not an action of the Connecticut Department of Transportation; where the Federal and State Courts have a clear non-discretionary duty under the Due Process Clause, AT A MINIMUM, requires that deprivation of life, liberty or property by adjudication be preceded by NOTICE and OPPORTUNITY for HEARING appropriate to the nature of the case. U.S.C.A. Constitutional Amendment 14.

IX. Citing *SHOEMAKER V. UNITED STATES,* 13 S.Ct. 361, 375 (1893) at 383 "THE COURT HAS NO DISCRETION." "It is the duty of the Court to ascertain the value of the land embraced in the recorded map which is selected and condemned. If the Court should decline to discharge that duty, the Commission would be entitled to a MANDAMUS to compel it."

H. ORDER

Petitioner prays that this beloved State Supreme Court of Connecticut, who, cannot issue any orders directing any judge or judges of the Superior Court below to file an answer to this petition for the obvious reason there is [NO] proceedings, of any nature, initiated by the State Agency; that the lower court could or should act on – OR – answer to this petition; where it is obvious there was no notice, service on necessary parties or return to the Superior Court (See #9 Facts); the Supreme Court of Connecticut must invoke the Writ of Mandamus – [UPON ITSELF] – within two (2) weeks, 14 days where by its unconstitutional decree has denied just compensation that has passed its 45th anniversary – to comply with its centuries old citation of *Parsons v. Lyman,* 32 Conn. 566, 577 (1863) that "The judgment of a court of even general jurisdiction cannot affect a person who had no notice to appear, as to him the proceedings are *corum non judice.*

Respectfully submitted,

/s/ Augustus Simmons

Augustus Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATE OF SERVICE

Petitioners/titleholder/owner hereby certifies copies of this MANDAMUS APPLICATION, and, copies of EXHIBITS incorporated in most recent petition for Writ of Mandamus to United States Supreme Court of May 30, 2007 – to the Supreme Court of Connecticut – in support and further amplification of the Constitutional Infirmities of Petition-Motion-Demand to REMAND and VACATE ATTACHMENTS dated November 10, 2005, has been mailed, postage prepaid, this 8th day of August, 2007, to all parties listed below.

Marion C. Blakey
Federal Aviation
Administrator
800 Independence Ave., S.W.
Washington, D.C. 20591

John Malone, Esq.
State Attorney's Office
111 Phoenix Ave.
Enfield, CT 06082

Paul D. Clement
Solicitor General
950 Pennsylvania Ave., N.W.,
Room 5614
Washington, D.C. 20530-0001

Paul Pernerewski
Assistant Attorney General
P.O. Box 317546
Newington, CT 06131-7546

Ralph Carpenter,
Commissioner
Connecticut Department
of Transportation
2800 Berlin Turnpike
P.O. 317546
Newington, CT 06131-7546

Chief Clerk
Superior Court
95 Washington Street
Hartford, CT 06106

Rogin, Nassau, Caplan,
Lassman & Hirtle, Esq.'s
City Place I
Hartford, CT 06106

Major George Warrall
Connecticut Air Guard
360 Broad Street
Hartford, CT 06105

/s/ Augustus Simmons
Augustus Simmons
P.O. Box 1
Windsor, CT 06095
(860) 569-6714

Date returned: 8/15/07 SC/AC # CV70-0163875S

Simmons v. Wetherall

The following papers: Mandamus Application

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are being returned per P.B. §62-7 for the reason(s) indicated:

1. Originals are needed and/or papers are not signed.
2. Certification of service per P.B. §62-7, Motions require certification on the original and all copies.
3. Exceeds number of pages allowed by P.B. §_____.
4. Our records do not disclose an appeal captioned as the enclosed.
5. Motion returned – not in compliance with P.B. §66-2 (format); and/or §66-3 (font & margins). Certification should contain reference to §66-3 and should be on the original and all copies.

6. Requires permission of the court.

7. Requires permission of the court. There is no provision in the practice book which provides for the filing of such a document.

8. Case withdrawn/dismissed.

9. An endorsed copy of the appeal form is required. P.B. §63-3.

10. Failure to pay the $70.00 filing fee as required by C.G.S. § 52-259c. Fees are payable in the trial court. The Appellate Clerk's Office does not accept cash, checks or money orders.

11. Motions to Withdraw Appearance require reasonable notice be given to the party being represented. See P.S. §62-9.

12. Brief returned – not in compliance with P.B. §67-2 (Only Arial or Univers type is allowed.)

13. Electronic version of transcript may be filed by court reporter/monitor only.

14. Other See attached order dated May 31, 200

[See pp. 19-20, *supra*.]

FOR INFORMATION ON THE CONNECTICUT RULES OF APPELLATE PROCEDURE SEE:

http://www.jud.state.ct.us/pb.htm and
http://www.jud.state.ct.us/Publications/appellatehandbook.pdf

ALL DOCUMENTS MUST BE RECERTIFIED TO ALL COUNSEL AND PRO SE PARTIES WHEN REFILED.

APPELLATE CLERK'S OFFICE
231 CAPITOL AVENUE
HARTFORD, CT 06106
860-757-2200 Fax 860-757-2217

AFFIDAVIT – APPENDIX – INDEX

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15. C.G.S. § 8-129
16. SIMMONS V. PARIZEK, No. 162923, January 1, 1977

AFFIDAVIT - EXHIBIT [1]

1. Whereby the courts, including the Connecticut Supreme Court are mandated by the 5th and 14th Amendments to provide, allow, permit, process for the assessment of damages and ascertainment of fair and just compensation – where federal appropriation and projects are at issue, AND, there is not, has not, been any valuations (appraisals) hearings, notices, legal seizures (mesne process) of any type, shape, or form initiated by the state acquiring agency – since March 24, 1972, that would give the courts (Superior and Supreme) Jurisdiction of the res, the parties, the process, mandates a REMAND for a "Day in Court".

2. Where the corrupt, discharged, legally withdrawn Plaintiff's contingency counsel – in collusion, conspiracy, collaboration with the state acquiring agency had intentionally, maliciously, tortiously – flaunted, avoided, disregarded Federal Law, mandated on every state of the United States by the Uniform Real Property Acquisition Act of Congress in 1970; wherein under 49 CFR 24.102(c) APPRAISALS must be made [BEFORE] any negotiations, and no ascertainment of just compensation can be made without appraisal; wherein the state acquiring agency never initiated any mesne process that would get the necessary parties before the Court; wherein Plaintiff's counsel (Rogin-Hirtle, Esq.'s) contractually agreed on a contingency basis to address DAMAGES as part of the Just Compensation Mandate and on January 4, 1978 when queried by Plaintiff's replacement counsel, (Robert King, Esq.) as to why

damages were not being addressed, the response from Edward Rogin, Sr. (Discharged on 12/23/77) was: "He is an alcoholic, he will not know the difference."

3. Wherein the attachments on the land records contain covenants, highway acquisitions, restrictions without a day in court to address value – their propriety – or a return to court and the state acquiring agency not initiating any mesne process, the [UNAUTHORIZED PRIVATE COUNSEL] *cannot* transmogrify Plaintiffs tort action (#163875) into an eminent domain action by superimposing the Connecticut Department of Transportation as Plaintiff in the tort action at Vol. 59, page 662 (Exhibit 2a); wherein all the necessary parties to be served notice, *CANNOT* be made parties to the private tort action.

4. Wherein the Connecticut Supreme Court cannot, should not be rendering a decree under *Simmons v. Wetherall,* sanctioning a violation of basic applicable Federal Law where federal projects – grant agreements are at issue, acting with no process, no records, no docket number before the Superior Court below, which Court invoked the citation of *Shelton v. Wolthausen,* 80 Conn. 599 (1908) (Ex. 7a) of Appendix to deny distribution of unconstitutional funds – mandates a VACATURE of ATTACHMENTS and a REMAND where the record is ultra clear the Owner refused to participate in an unconstitutional verbal compensation shakedown (Ex. #4); refused to tender any deeds-title-rights to the Federal Agency (F.A.A.) (Ex. #5), that forced the capitulation and legal withdrawal of all counsel on 4/19/78 (Ex. #6).

5. Wherein the state acquiring agency has never initiated any mesne action since March 24, 1972 – TO REACQUIRE – satisfactory property interest pursuant to the Federal/State Grant Agreement of January 12, 1955 (Ex. #11), YET, has continually engaged in [LEASING] the subject real property to the Federal Agency (Ex. #12), who CANNOT, under the Fifth Amendment, – DEFER – participation in the costs of acquiring the land until after it has been accomplished successfully (Ex. #13), mandates a REMAND of who is going to pay fair and just compensation – from date of taking with interest.

6. Wherein the Superior Court appointed Referee (Shapiro, L.) never submitted any report, decree, judgment, opinion back to the Superior Court under Docket #163875 in which he was the presiding jurist and his letter to Rogin-Hirtle, Esq.'s pinch-hitting counsel of July 18, 1980 – AFTER the Supreme Court Decree of May 13, 1980 (Ex. #8) recommended REMAND to the Superior Court regarding notices to necessary parties and this issue cannot be resolved or concluded without an opportunity to come before the Court, the motion is respectfully requested to be honored.

Respectfully submitted,

/s/ Augustus Simmons

Augustus Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

[EXHIBIT] [2]

December 1, 1996

Town Clerk
Town Hall
9 Center Street
East Granby, CT 06026

Dear Clerk,

The subject matter of this letter pertains to: *DISSOLUTION OF ATTACHMENTS PURSUANT TO C.G.S. § 52-327.*

1. Plaintiff-owner-interested person Augustus J. Simmons requests the following listed encumbrances be endorsed on the record of such attachment with the words *"DISCHARGED BY OPERATION OF LAW"* pursuant to Connecticut General Statute § 52-327.

2. The attachments on the public land records under the caption of *Augustus J. Simmons v Horace B. Wetherall,* CV-70-163875 by private counsel, without any eminent domain proceedings in existence-or-initiated for attachment purposes, without any notice or service of process on interested parties, without any return of service to the court of competent jurisdiction (Superior Court) prior to or after the attachment, and, without appraisals to establish fair-market value that are mandatory, including a transfer of title under plaintiff's private tort action, Docket #163875 are:

Vol. 59, p. 657-668
Vol. 59, p. 654-656
Vol. 59, p. 623-626
Map Book 17, page 853
Map Book 17, page 854

3. Included in Vol. 59, p. 657-668 is a citation at page 661-662 of names of parties and institutions to be served with notice with a return day of the first Tuesday of July, 1978.

4. Vol. 59, p. 661-662 *DOES NOT* list Augustus J. Simmons for notice and service, however, he is still an "interested person," – he just happens to be the owner.

5. That there was *NO* officer's service on any par-ties, *NO* written return of his (officer's) precept to the court of competent jurisdiction (Superior Court) and NO compensation paid is evident in a letter from Atty. Tom Byrne, a copy being submitted as an exhibit showing an encumbrance at Vol. 55, page 731 (1974) of East Granby land records (also listed in the citation at Vol. 59, p. 661-2) that is still outstanding.

The listed attachments in item #2 were recorded on June 2nd and 5th of 1978 which is a much longer period than *FIFTEEN YEARS* from date of attachment.

6. The interested person (owner) submits a sworn testimonial from Atty. Walter Bass before Hon. Dupont, A. on June 7, 1982 representing "Valente's" and "Allaire's" with outstanding liens at Vol. 58, p. 95;

Vol. 58, p. 221; 59/253; 59/263; 59/266 (trans. p. 26) that states:

"Your Honor, in Mr. Feingold's recitation that he gave Your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never been served any citation nor has my clients even been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter."

The above citations of Valente and Allaire are (also listed in the citation at Vol. 59, p. 661-2).

7. The caption *Simmons v Wetherall,* #163875, a tort action *AGAINST* the state, a result of special Act #170 of the 1969 legislature, *CANNOT* be TRANSMOGROFIED into an eminent domain action by superimposing the Connecticut Department of Transportation as plaintiff (Vol. 59, p. 662), by private counsel, for land acquisition for federal navigational instrumentation projects, per federal grant agreement 9-06-009-5708 (1955), that must be acquired pursuant to federal regulations, constituting a fraudulent encumbrance.

8. Under the law of Connecticut, any lien created by attachment continues for 60 days after judgment and no longer. If no execution is taken out

before that time, the lien perishes. *Sanford v Pond,* (1871) 37 Conn. 588.

9. Where it is unambiguously clear there was no notice, no service, or, return to the court of competent jurisdiction, no judgment file or record of any kind before the court of competent jurisdiction under Docket #163875, and, the listed return day was the first Tuesday of *July, 1978* (Vol. 59, p. 661) and the attachments were submitted on June 2nd and 5th of 1978, some of which contained a court stamp of the Court Clerk (Thomas H. Abraham) of Superior Court to give the appearance of authenticity to the public is FRAUD upon the court, the public, and the "interested persons" named in the citation.

Court records show the succeeding Chief Clerk, (Lucian Jachomovitz) informing Hon. Judge John Daly in *August, 1979* there were *NO* proceedings before the Superior Court, consequently the Superior Court was without jurisdiction to act, referencing the citation of *Shelton v Wolthausen,* 80 c. 599.

10. Court records show a motion filed with Judge Aronson by plaintiff-owner-interested person (Simmons) that jurisdiction could not be created "sua sponte" in December, 1991 relative to the notice from the court to Atty. Tom Byrne, and others, and as a result of said motion the "slush fund" monies being held under the direction of the court were ABANDONED.

11. Unquestionably, there is years, not months or days beyond the statutory fifteen (15) years

referenced and "DISCHARGED BY OPERATION OF LAW" is the purpose and request of this letter.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

[EXHIBIT] [2a]

Vol 59, Page 661

CITATION

TO THE SHERIFFS OF THE COUNTIES OF HART-FORD AND NEW HAVEN, THE DEPUTIES OR EITHER CONSTABLE OF THE TOWNS OF HARTFORD, WEST HARTFORD, MERIDEN, WAREHOUSE, POINT, NEW BRITAIN, AND EAST GRANBY, WITHIN SAID COUNTIES,

GREETINGS:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to summon Jerome H. Diamond, 25 Arlen Way, West Hartford, Conn., Thomas P. Byrne, Esq., 790 Farmington Avenue, West Hartford, Conn., Leonidas D. Simmons, c/o Danaher & Danaher, Esqs., 51 Parker Avenue, Meriden, Conn, Connecticut Bank & Trust Co., One Constitution Plaza, Hartford, Conn.; Hartford National

Bank, 777 Main Street, Hart-ford, Conn., Leonard Allaire, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Patsy Valenty, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Westside Valet Parking, Inc., c/o Charles Gersten, Esq., 234 Pearl Street, Hartford, Conn., David B. Salzman, c/o Jason Pearl, Esq., 19 S. High Street, New Britain, Conn., and Angelo J. Roncari, P.O. Box 268, East Granby, Conn. and them summon to appear before the Superior Court to be held in the County of Hartford at Hartford, on the first Tuesday of July, 1978, at 10:00 o'clock in the forenoon, said appearance to be made by said Jerome H. Diamond, Thomas P. Byrne, Leonidas D. Simmons, Connecticut Bank & Trust Company, Hartford National Bank, Leonard Allaire, Patsy Valente, Westside Valet Parking, Inc., David B. Salzman, and Angelo J. Roncari, or their attorneys, [662] on or before the second day following said return date, then and there to answer unto the Commissioner of Transportation of the State of Connecticut, of the Town of Wethersfield, County of Hartford, in a civil action, wherein the plaintiff complains and says:

Each lienor, encumbrancer and/or party cited herein shall state whether or not he or they claim any estate or interest in or encumbrance on the property described herein or any part thereof, and, if so, the nature and extent of the estate, interest or encumbrance which he or they claim, and he or they shall

set out the manner in which such estate, interest or encumbrance is claimed to be derived.

PLAINTIFF, COMMISSIONER OF TRANSPORTATION STATE OF CONNECTICUT

BY: CARL R. AJELLO
ATTORNEY GENERAL

/s/ William A. McQueeney
William A. McQueeney – 85340

EXHIBIT [3]

UNIFORM REAL PROPERTY BASIC ACQUISITION POLICIES MANDATE FOR FEDERAL PROJECTS

49 C.F.R. section 24.102 BASIC ACQUISITION POLICIES

(a) *Expeditions Acquisitions.* The agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the agency's interest in acquiring the real property and the BASIC PROTECTIONS, including the agency's obligation to secure an appraisal, provided to the owner by law and this part.

(c) *Appraisal, Waiver Thereof and Invitation to Owner.* (1) Before the initiation of

negotiations the real property to be acquired shall be appraised, except as provided in section 24.102(c)(2), and the owner, of the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and Offer of Just Compensation.* Before the initiation of negotiations, the agency shall establish an amount, which it believed, is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. Promptly there-after, the agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary Statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include: (1) A statement of the amount offered as just compensation.

In case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated. (2) A description and location identification of

the real property and the interest in the real property to be acquired. (3) An identification of the buildings, structures, and other improvements which are to be considered to be part of the real property for which the offer of just compensation is made.

(f) *Basic Negotiation Procedures.* The agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payments of incidental expenses in accordance with 49 C.F.R. section 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The agency shall consider the owner's presentation.

(g) *Updating Offer of Just Compensation.* If the information presented by the owner, or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the agency shall have the appraisal(s) updated or obtain a new

appraisal. If the latest appraisal information indicates that a change in the purchase offer is warranted, the agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive Action.* The agency shall not advance the time of condemnation or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative Settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized agency official approves such administrative settlement as being reasonable, prudent, and in the public interest.

(j) *Payment Before Taking Possession.* Before requiring the owner to surrender possession of the real property the agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding

for the property. In exceptional circumstances, with the prior approval of the owner, the agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic Remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

(l) *Inverse Condemnation.* If the agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair Rental.* If the agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

[EXHIBIT] [4]

12/23/77

Dear Mr. Rogin,

I am a totally dissatisfied individual with the *"GOOD DEAL"* that your Firm has arranged with the Dept. of Trans. concerning my property at Bradley Field.

Because everyone is now in an awkward position upon your firm's insistence of accepting a proposal *without* the benefit of a Market Research Study by the John Rawlson Firm, I am asking the Rogin Firm to withdraw immediately so I can obtain other Counsel.

On my visit to your office on Thurs. Dec. 22nd, I told you I wanted to protect my rights against your recommendations.

I also compiled some data wherein I showed you and again outline a breakdown of Parcel "C".

Asking me to yield all of Parcel "A" and all damages for absolutely nothing is not representing my best interests.

Will appreciate an immediate withdrawal.

/s/ O. Simmons

Parcel "C" May 1975	382.000
Rental May "76" to May "78" @ 20,000	60.000
Out of Pocket Expenses	82.000
	524.000

[EXHIBIT] [5]

CLOSING REMARKS of proceedings held on April 19, 1978, at the offices of ROGIN, NASSAU, CAPLAN, LASSMAN and BORDEN, ESQUIRES, 111 Pearl Street, Hartford, Connecticut.

APPEARANCES:

Augustus (Ozzie) Simmons

John Kataja

David Salzman, Esq.

Stephen Silverman, Esq.

Ned Rogin, Esq.

Phillip Robbins, Esq.

F. D. Neusner, Esq.

Dennis Cemeriva Esq.

Robert L. Hirtle, Esq.

Reported by:

William G. Crompton
Certified Shorthand Reporter
Notary Public

[8] delivery of the deeds, of course.

MR. HIRTLE: Mr. Simmons, as I understand it you don't want to proceed further with the closing, is that correct?

MR. SIMMONS: Bob Hirtle, I have the highest respect for you just like I sent you the letter, I have the highest and utmost respect for Referee

Shapiro and I further qualified it by saying that I am not going to be a party to any deal which is going to be coming out and being made public whereby the Rogin firm and my good friends here, Dave Salzman and Steve, who I have been very prone to pick on. It is just not fair to everybody to have this kind of an arrangement and I am not going to be a party to it. What the State is attempting to do here is to say okay let's date this thing back so their skirts are clean. They want me to go back and do battle with the Town over the taxes and I say bullshit to that. We are going to clear that matter up before there will by any Goddamned closing. We are going to get that cleared up and they are going to be open and above board. I don't care if it is Referee Shapiro. Hell, it is everybody and I'm telling you, everyone at the table, everything is going to be above board and no dealing is going back to November of '64.

MR. HIRTLE: You will not sign a deed today to consummate the closing, is that what I understand?

MR. SIMMONS: Because the agreement states and [9] I have to say if any portion of it is a nullity then it is a nullity and I am not going to be a party to anything that is a nullity.

MR. NEUSNER: Is that a definite negative answer?

MR. HIRTLE: You are instructing counsel not to proceed with the closing because you consider it to be a nullity?

MR. SIMMONS: I am going to answer you Bob by saying that I sent you a certified letter expressing my position and when I talked to you on the phone, I said to myself, at least I am going to give them the courtesy of putting in an appearance today. I think that is a sufficient answer.

MR. HIRTLE: So I am not to proceed to closing and you will not sign the deeds today?

MR. SIMMONS: That is correct.

MR. HIRTLE: And the meeting is adjourned.

(Whereupon at 11:44 o'clock a.m. the closing was adjourned).

* * *

[EXHIBIT] [6]

NO. 202121-8

STATE OF CONNECTICUT :	SUPERIOR COURT
VS. :	HARTFORD COUNTY
AUGUSTUS J. SIMMONS :	APRIL 19, 1978

NO. 199230-9

AUGUSTUS J. SIMMONS

VS.

SAMUEL KANELL, ET AL

NO. 140965

STATE OF CONNECTICUT

VS.

ANASTASIA SIMMONS

AUGUSTUS J. SIMMONS
and CHARLES SIMMONS

NO. 162923

AUGUSTUS J. SIMMONS

VS.

FRANK C. PARIZEK, ET AL

NO. 163875

AUGUSTUS J. SIMMONS

VS.

HORACE B. WETHERELL,
ET AL

MOTION TO WITHDRAW AS COUNSEL

The undersigned respectfully move for the permission of the Court to withdraw as counsel for Augustus J. Simmons in the above-captioned matters.

/s/ Robert Hirtle
ROGIN, NASSAU, CHAPLAN,
LASSMAN AND HIRTLE

/s/ David B. Salzman
DAVID B. SALZMAN,
ESQUIRE

/s/ Stephen W. Silverman
STEPHEN SILVERMAN,
ESQUIRE

ORDER

The foregoing motion is granted/denied.

BY THE COURT

_____

Clerk

This is to certify that the foregoing has been mailed this day to counsel of record and to the plaintiff.

/s/ Robert L. Hirtle Jr.
Robert L. Hirtle, Jr.

[EXHIBIT] [7]

Law Offices
Jason E. Pearl

19 SOUTH HIGH STREET
POST OFFICE BOX 183
New Britain, Connecticut 06050

Jason E. Pearl
Kenneth J. Speyer

Telephone
(203) 229-1603

August 30, 1979

The Honorable John Daly
Superior Court
95 Washington Street
Hartford, CT

Re: David Salzman
Vs: Augustus Simmons
Docket No. 218559 8

Dear Judge:

First of all, welcome back from vacation.

While you were away on August 13 I received a telephone call from one of the assistant clerks advising me that if I wished to reargue my Motion For Turnover dated July 25, 1979, I would have to claim it for the Short Calendar. I was rather taken back by this announcement inasmuch as my file indicates that you granted the motion in open court on July 27, 1979. I recall you speaking to me briefly subsequent to that time indicating that you were going to meet with Mr. Abraham with respect to the order, but you did not indicate to me that you had vacated your prior decision. I would assume that for me to be put into the position of having to "reargue" your prior decision would have to be revoked. Until that happens, I really do not know what there is for me to argue.

I would be most appreciative of your guidance in this matter.

Yours very truly,

/s/ Jason E. Pearl, Esq.
Jason E. Pearl, Esq.

JEP/ck
1888

[Hearing set up for 9/12/79 at 2:00 p.m.]

EXHIBIT [7a]

Linda

Based on SHELTON v WOLTHAUSEN, 80C 599 (furnished by Lucian) I would have no authority to grant this motion. Will you kindly notify Jason Pearl regarding this & if he wishes to argue the matter put it down.

Thanks

EXHIBIT [8]

APPENDIX

STATE OF CONNECTICUT

LOUIS SHAPIRO
STATE REFEREE
HARTFORD, CONN.
06106

SUPREME COURT BUILDING
P.O. DRAWER N.
STATION A

July 18, 1980

Jason E. Pearl, Esquire
19 South High Street
P.O. Box 183
New Britain, CT 06050

Re: No. 16 38 75
Augustus J. Simmons v. Horace B. Wetherell, et al

Dear Mr. Pearl:

This will acknowledge receipt of your Motion For Disbursement of Funds by Clerk dated July 16, 1980 and received by me this morning.

Since your phone call to me, I am not certain as to what steps should be taken in order to make disbursement as requested by you. Since the amount attached by Atty. Salzman et als was accomplished by bringing suit, it would seem to me that before distribution could be made, that this claim be reduced to a judgment. If there is a more expeditious way to proceed, I would appreciate hearing from you as soon as possible.

I'm also concerned about the order of distribution since the land records, according to your memorandum attached to your letter, show a list of encumbrances prior to the date of the Salzman attachment.

Also, in view of the many complications which I anticipate, would it not be better to have this issue handled by the Superior Court? I am not equipped, as a referee to give notice to the various creditors which I believe may be necessary. It would seem that your motion could be handled properly by the Superior Court.

Very truly yours,

Louis Shapiro
State Referee

LS:mcd

cc: Ronald Cassidento, Esquire
William A. McQueeney, Esquire

EXHIBIT [9]

APPENDIX

CASE NO. 16 38 75

AUGUSTUS SIMMONS	:	SUPERIOR COURT
vs.	:	HARTFORD JUDICIAL DISTRICT
HORACE WETHERALL, ET AL.	:	OCTOBER 15, 1991

MOTION TO TRANSFER FUNDS

Since 1978 the Clerk's Office has been the Custodian of moneys deposited in the above case. The money was to be paid out upon consummation of a transfer of certain real estate by the named plaintiff. Such a transfer has not yet occurred.

Attached to this motion are memos from the Treasurer of the State of Connecticut and from the Court Operations Unit of the Judicial Branch in explanation of this motion. The Clerk's Office requests the granting of this motion to transfer.

[off – parties have met 11/8/91 and will work out a stipulation to be presented to the court for the withdrawal of all funds and closing of file. /s/ Aronson, J. ARONSON, J. 11/8/91]

/s/ Lucian J. Jachimowicz
LUCIAN J. JACHIMOWICZ
CHIEF CLERK

ORDER

The Court, having heard the parties, grants the motion.

Judge

EXHIBIT [10]

APPENDIX

STATE OF CONNECTICUT

SUPREME COURT

NO. HHD CV70-0163875S

AUGUSTUS J. SIMMONS

v. : **MAY 31, 2000**

HORACE B. WETHERALL ET AL.

ORDER

THE MOTION OF THE PLAINTIFF, FILED MAY 1, 2000, TO VACATE, HAVING BEEN PRESENTED TO THE COURT, IS HEREBY ORDERED **DISMISSED**.

IT IS FURTHER, ORDERED THAT THE PLAINTIFF IS HEREBY PROHIBITED FROM FILING PLEADINGS IN THIS COURT THAT

ARE RELATED TO DOCKET NUMBER CV70-0163875.

BY THE COURT,

/s/ Francis Drumm
CHIEF CLERK

NOTICE SENT: MAY 31, 2000
AUGUSTUS SIMMONS, PRO SE
PAUL K. PERNEREWSKI,
ASSISTANT ATTORNEY GENERAL
ROGIN, NASAU, CAPLAN,
LASSMAN & HIRTLE
CLERK, HARTFORD J.D.
HON. JOHN J. LANGENBACH

[EXHIBIT] [11]

DEPARTMENT OF COMMERCE

CIVIL AERONAUTICS ADMINISTRATION

WASHINGTON 25

GRANT AGREEMENT

Part I – Offer

CONTRACT NO. CICA 36-A

Date of Offer
January 12, 1955
Bradley Field Airport

Project No.
09-06-009-507

TO: STATE OF CONNECTICUT
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Administrator of Civil Aeronautics, herein referred to as the "Administrator")

WHEREAS, the Sponsor has submitted to the Administrator a project Application dated December 2, 1954 for a grant of federal funds for a project for development of the Bradley Field Airport (herein called the "Airport") together with plans and specifications for such project, which Project Application, as approved by the Administrator, is hereby incorporated herein and made a part hereof; and

WHEREAS, the Administrator has approved a project for development of the Airport (herein called the "Project") consisting of the following described airport development:

> "Acquisition of land for 'Doolittle' clear zones both ends Runway 6-24; acquisition of land and navigation easements for protection of approaches 6-24, 19, 33".

all as more particularly described in the property map and plans and specifications incorporated in the said Project Application;

NOW THEREFORE, pursuant to and for the purposes of carrying out the provisions of the Federal Airport Act (60 Stat. 170; Pub. Law 377, 79th Congress), and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application, and

BEST AVAILABLE COPY

its acceptance of this Offer, as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and the operation and maintenance of the Airport, as herein provided.

THE ADMINISTRATOR, FOR AND ON BEHALF OF THE UNITED STATES HEREBY OFFERS AND AGREES to pay, as the United States' share of the cost in accomplishing the project, 50 percent of all allowable project costs subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be $37,000.00

2. The Sponsor shall

   (a) begin accomplishment of the Project within a reasonable time after acceptance of this Offer, and

   (b) carry out and complete the Project in accordance with the terms of this Offer, and the Federal Airport Act and the Regulations promulgated thereunder by the Administrator in effect on the date of this Offer, which Act and Regulations are incorporated herein and made a part hereof, and

   (c) carry out and complete the Project in accordance with the plans and specifications and property map incorporated herein as they may be revised or modified

with the approval of the Administrator or his duly authorized representatives.

3. The Sponsor shall operate and maintain the Air-port as provided in the Project Application incorporated herein.

4. The maximum amounts of building space which the Sponsor shall be obligated to furnish civil agencies of the United States for the purposes and on the terms and conditions states in Paragraph 9 of Part III of the Project Application dated May 18, 1949, for Project No. 9-06-009-906-009-801 shall be as set forth in the attached schedule of maximum space requirements which is incorporated herein and made a part hereof.

5. Any misrepresentation or omission of a material fact by the Sponsor concerning the Project or the Sponsor's authority or ability to carry out the obligations assumed by the Sponsor in accepting this Offer shall terminate the obligation of the United States and it is understood and agreed by the sponsor in accepting this Offer that if a material fact has been misrepresented or omitted by the Sponsor, the Administrator on behalf of the United States may recover all grant payments made.

6. The Administrator reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.

7. This Offer shall expire and the United States shall not be obligated to pay any of the allowable costs of the Project unless this Offer

has been accepted by the Sponsor within 60 days from the above date of Offer or such longer time as may be prescribed by the Administrator in writing.

8. It is understood and agreed that the areas delineated on Exhibit "A" as 'Doolittle' clear zones at each of the Runway 6-24 will be maintained by the Sponsor completely free from all structures except these required for aids to air navigation, unless otherwise authorized by the Administrator.

9. It is further understood and agreed by and between the parties hereto that the Project Application dated May 18, 1949 for Project No. 9-06-009-801 is hereby amended by deleting the last sentence of Paragraph 7 of Part III thereof and inserting in lieu thereof the following:

> "The airport approach standards to be followed in performing the covenants contained in this paragraph shall be those established by the Administrator in Office of Airports Drawing No. 814, dated April 26, 1950, unless otherwise, authorized by the Administrator".

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided,

and said Offer and acceptance shall compromise a Grant Agreement, as provided by the Federal Airport Act, constituting the obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Airport. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project but in any event not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
THE ADMINISTRATOR
OF CIVIL AERONAUTICS

By /s/ Ora W. Young
Regional Administrator,
Region One

Part II – Acceptance

The STATE OF CONNECTICUT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this 1st day of February 1955.

STATE OF CONNECTICUT
(Name of Sponsor)
By /s/ K.H. Ringrose
Title Director of Aeronautics

(SEAL)

Attest: /s/ Mildred P. Allen
Title: Secretary of State

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Jack Rubin, acting as Attorney for STATE OF CONNECTICUT, ~~go here to certify~~ (herein referred to as "Sponsor"), to hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Connecticut, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at HARTFORD, CONNECTICUT this 1st day of February, 1955.

/s/ Jack Rubin
Title Assistant Attorney General

[EXHIBIT] [12]

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

NEW ENGLAND REGION
12 NEW ENGLAND EXECUTIVE PARK
BURLINGTON, MA 01803

Lease No.: DOT-FA74NE-0369
BRADLEY INTERNATIONAL
ILS-ALS R/W6

LEASE

between
STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

and

THE UNITED STATES OF AMERICA

This LEASE, made and entered into this first day of June in the year one thousand nine hundred and seventy four by and between the State of Connecticut, Department of Transportation whose address is 24 Wolcott Hill, Wethersfield, Connecticut, 06109 for itself and its heirs, executors, administrators, successors, and assigns, hereinafter called the lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

1. For the term beginning June 1, 1974 and ending June 30, 1974, the lessor hereby leases to the

Government the following described property, hereinafter called the premises, viz:

As contained in Exhibit I attached hereto and made a part hereof.

a. Together with a right-of-way for ingress to and egress from the premises; a right-of-way or rights-of-way for establishing and maintaining a pole line or pole lines for extending electric power, and telecommunications facilities to the premises; and right-of-way for subsurface power, communication and water liens to the premises; all rights-of-way to be over the said lands and adjoining lands of the lessor, and unless herein described by metes and bounds, to be by routes reasonably determined to be the most convenient to the Government.

b. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of air navigation and telecommunications facilities.

c. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which fixtures, additions, or structures so placed in or upon, or attached to the said premises shall be and remain the property of the Government, and may be removed upon the effective date of termination of this lease, or within 90 days thereafter, by or on behalf of the

Government, or its grantees, or purchasers of said fixtures, additions, structures, or signs.

2. This lease may, at the option of the Government, be renewed from year to year and otherwise upon the terms and conditions herein specified. The government's option shall be deemed exercised and the lease renewed each year for 1 year unless the Government gives the lessor 30 days written notice that it will not exercise its option before this lease or any renewal thereof expires; *PROVIDED*, that no renewal thereof shall extend the period of occupancy of the premises beyond the 30th day of June 1994;

4. The Government may terminate this lease, in whole or in part, at any time by giving ninety days notice in writing to the lessor, and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

5. No Member of Congress or Resident Commissioner shall be admitted to any share or part of this lease, or to any benefit to arise therefrom. Nothing, however, herein contained, shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

6. The lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, brokerage, percentage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies

maintained by the lessor for the purpose of securing business. For breach or violation of this warrant, the Government shall have the right to annul this lease without liability, or in its discretion to deduct from the contract price or consideration, the full amount of such commissions, brokerage, percentage, or contingent fee.

7. The Government shall surrender possession of the premises upon the expiration or the effective date of termination of this lease. If the lessor, by written notice at least thirty days before the expiration or the effective date of termination requests restoration of the premises, the Government at its option shall within ninety (90) days thereafter, or within such additional time as may be mutually agreed upon, either* (1) restore the premises to as good condition as that existing at the time of the Government's entering upon the premises under this lease (changes to the premises in accordance with paragraph 1 above, ordinary wear and tear, damage by natural elements and by circumstances over which the Government has no control, excepted) or (2) make an equitable adjustment in the lease amount for the cost of such restoration of the premises or the diminution of the value of the premises if unrestored, whichever is less. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a supplemental agreement hereto effecting such

---

* Subparagraphs a and b only

agreement. Failure to agree to any such equitable adjustment shall be a dispute concerning a question of fact within the meaning of Clause 8 of this lease.

8. (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the lessor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the lessor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary, Department of Transportation. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the lessor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the lessor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above:

Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

9. The Lessor grants to the Government the right to utilize any existing power lines, control lines, conduits, or other facilities of the Lessor which are adaptable to use in connection with the purpose of this covenant.

10. The Lessor hereby warrants that it has acquired and possesses an adequate real estate right in the property described herein, and that it is authorized to grant to the Government the rights and interests set forth herein.

11. The right of ingress and egress and the right of way herein granted shall insure to the benefits of the Government and its duly authorized agents, representatives, contractors and employees.

12. The Lessor agrees not to erect or to allow to be erected on the property leased hereby or on adjacent property of the Lessor, any structure or obstruction of whatsoever kind or nature as will interefere [sic] with the proper operation of the facilities to be installed by the Government under the terms of this Lease unless consent thereto shall first be secured from the Government in writing. Further, in order to insure the continuing proper operation of the ALS Facility, the Lessor shall prevent the erection of any structure, or the natural growth of trees, brush that will cause that structure or natural growth to:

(a) protrude an area hereinafter referred to as the light plane. For obstruction clearance purposes this light plane is defined as rectangular in shape, 400 feet wide and symmetrically located about the ALS centerline; it shall start at the landing threshold and extend 200 feet beyond the approach end of the system.

(b) prevent a clear line of sight to all lights of the system from any point on a surface, one-half degree below the glide path and extending 250 feet each side of the centerline, up to 1600 feet in advance of the outermost light in the system.

13. In order to insure the continuing proper operation of the Instrument Landing System(s), the Lessor agrees that certain critical and no-parking areas, which are shown on the attached Drawing No. 1-A-3076, shall be established in the vicinity of the localizer and glide slope facilities.

Where the critical areas lie within the bounds of the Airport, the Lessor agrees not to erect or allow to be erected any structure of any kind or nature nor to perform or allow to be performed any excavating, grading or planting operations within these areas, without the prior concurrence of the Government. Where the critical areas lie outside the bounds of the airport, the Lessor agrees to extend every effort to negotiate agreements with the property owners involved covering these restrictions.

In the event of natural erosion, the Lessor agrees to perform corrective grading, planting and excavation within the critical area. Such work shall be accomplished during a period which is mutually agreeable to both Lessor and Lessee. Where the critical and no-parking areas lie within the bounds of the airport, the Lessor agrees not to permit the presence of parked aircraft, vehicles or equipment within the critical and no-parking areas, or of free moving aircraft or vehicles within the critical areas which are not under the control of tower personnel when the facilities are in operation. The Lessor agrees to provide and maintain no-parking signs within these areas, when required.

Where the critical and no-parking areas lie outside the bounds of the Airport, the Lessor agrees to extend every effort to negotiate agreements with the property owners involved granting the Lessor the right to establish and maintain no-parking signs on their properties within these areas.

The Lessor further agrees to provide and maintain markings as required, on all paved areas to delineate the limits of the critical area.

14. The Government waives the requirement for radio control of traffic in the vicinity of Runway 6 Localizer on the North Perimeter Road.

15. For and in consideration of the benefit to the Bradley International Airport and the general public using same, the Lessor agrees to and grants to

the Government all terms and conditions stated herein at no cost.

16. This lease will supersede License DOT-FA73NE-0308 on commissioning of the CAT-II ILS system.

17. The Lessor further agrees that in the event that relocation or modification of the FAA's facilities associated with air navigation or components thereof hereinbefore described is made necessary by airport improvements or changes made or caused to be made by the airport owner (the term "airport owner" used herein refers to the political subdivision or other competent authority responsible for the airport operation and capital improvements), the costs of such relocation or modification shall be chargeable to the Lessor; that the Government shall have the exclusive right to determine how the relocation or modification project shall be accomplished including, but not limited to, the engineering, site selection, procurement of equipment; construction, installation, testing, flight inspection and recommissioning of the facility; that upon submission by the Government of an estimate of the relocation or modification costs, the Lessor shall transfer to the Government the funds required for the relocation or modification; that in the event the actual costs of relocation or modification exceed the estimate submitted by the Government the Lessor shall pay only the actual costs; that the Government shall have the exclusive right to determine when a relocation or modification of a

facility or component thereof has been made necessary by airport improvements or changes made or caused to be made by the airport owner, and that this decision shall be final. It is agreed by and between the Lessor and the Government that in the event the actual costs of relocation or modification of a facility or component thereof is less than the estimate submitted by the Government the Lessor shall pay only the actual costs.

18. The following changes were made to this Lease prior to execution:

a. Deletion of certain wording in paragraph 2.

b. Deletion of paragraph 3 in its entirety.

c. Addition of certain wording in paragraph 7.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date indicated.

WITNESSES

/s/ Sandra L. Barones

/s/ Madeline P. Mckinnis

STATE OF CONNECTICUT
DEPARTMENT OF
TRANSPORTATION

By /s/ Joseph B. Burns (Seal)
Joseph B. Burns
Commissioner

Date: June 11, 1974

/s/ George J. Bates

/s/ Susan R. Pitt

UNITED STATES OF AMERICA
DEPARTMENT OF
TRANSPORTATION

By /s/ Roland O. Bisson Jr. (Seal)

Date: May 24, 1974

This Agreement is made with the approval of the undersigned, under the provisions of Section 13b-42(b) of the General Statutes of Connecticut, as revised.

/s/ C. Perrie Phillips
Deputy Attorney General
State of Connecticut

Date: JUL 26 1974

/s/ Gerald J. Nelson
Deputy Commissioner
of Finance and Control
State of Connecticut

Date: 6/25/74

I, Lucien A. Benjamin chief, Logistic Division of the New England Region, Federal Aviation Administration certify that Roland O. Bisson Jr. is duly authorized in his capacity as the Realty Contracting Officer of the New England Region, Federal Aviation Administration, to enter into Lease DOT-FA74NE-0369 with the State of Connecticut for the premises cited therein.

/s/ Lucien A. Benjamin
Chief, Logistics Division

If agreement is made with a State, County, Municipality or other public authority, the following certificate shall be executed by an authorized official:

I, Gloria Schaffer certify that I am the Secretary of the State of the

State of Connecticut
(State, County, Municipality, or other Public Authority)

that Joseph B. Burns who signed said agreement on behalf of the State of Connecticut was then Commissioner, Department of Transportation of said State of Connecticut that said agreement was duly signed for and in behalf of said State of Connecticut by authority of its governing body, and is within the scope of its powers.

[SEAL]

/s/ Gloria Schaffer
(Signature) (Corporate seal)
Gloria Schaffer
Secretary of the
State of Connecticut

[EXHIBIT] [13]

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
NEW ENGLAND REGION
154 MIDDLESEX STREET
BURLINGTON, MASS. 01803
Tel. 617 223-2271

26 May 1971 (LOGO)

Mr. Augustus J. Simmons
580 Park Avenue
Windsor, Connecticut 06095

Dear Mr. Simmons:

Your letter of 28 April 1971 has been referred to this office for reply to the question concerning the status of federal funding insofar as it relates to Bradley Field, Windsor Locks, Connecticut. The State of Connecticut, under a Grant Agreement issued under Federal Aid Airport Pro-gram, Project No. 9-06-009-5708 has been obligated to acquire your property in addition to other properties under separate ownerships. The State has acquired all other properties but has, to date, not succeeded in obtaining adequate interest in your property due, of course, to the litigation arising over the several attempts of the State to condemn the necessary land interests.

This agency has not withheld funds from the State under the project. We have, in fact, participated to the fullest extent under our regulations in all other costs incurred except, of course, costs related to the acquisition of your property. We have administratively

determined to reserve rights for the State of Connecticut to request federal participation in the costs of acquiring your land, after it has been accomplished successfully.

While we understand your anxiety to retain possession of your land, the acquisition for the benefit of Bradley Field has been considered to be overriding. Consequently, our agency favorably reviewed the State's request for federal aid. The material submitted with your correspondence is returned herewith.

Sincerely,

/s/ [Illegible]
J. B. KOMICH
for Acting Chief, Airports Division, NE-600

Enclosures

[EXHIBIT] [14]

STATE OF CONNECTICUT

April 5, 1977

LOUIS SHAPIRO
STATE REFEREE

SUPREME COURT BUILDING
P.O. DRAWER N, STATION A
HARTFORD, CONN. 06106

David B. Salzman, Esq.
36 Cannon Street
Hamden, Connecticut 06514

S. Victor Feingold, Esq.
Transportation Department
90 Brainard Road
Hartford, Connecticut

Re: Docket No. 16 38 75
Simmons v. Wetherell

Gentlemen:

Judge Shapiro asked me to notify you of the dates assigned for the captioned case which are:

December, 1977	January, 1978
6	3
7	4
8	5
13	10
14	11
15	12
20	
21	
22	

the hearing to commence each day at 10:00 A.M. in Hearing Room 3, Supreme Court Building, 231 Capitol Avenue, Hartford.

Please arrange to be present with your respective clients and witnesses on the above dates.

Very truly yours,

/s/ Frances Ciccarelli
Secretary to Judge Shapiro

fc

NOTE: Mr. Salzman: Will you please notify the Springfield attorney regarding these dates, as I do not have his complete name and address.

[Exhibit #15]

C.G.S. § 8-129 *Agency to determine compensation and file with Superior Court and town clerks; notice to owners and interested parties. Possession of land. Certificate of taking.* The redevelopment agency shall determine the compensation to be paid to the persons entitled thereto for such real property and shall file a statement of compensation, containing a description of the property to be taken and the names of all persons having a record interest therein and setting forth the amount of such compensation, and a deposit as provided in section 8-130, with the clerk of the superior court for the judicial district in which the property affected is located. Upon filing such statement of compensation and deposit, the redevelopment agency shall forthwith cause to be recorded, in the office of the town clerk of each town in which the property is located, a copy of such statement of compensation, such recording to have the same effect as and to be treated the same as the recording of a lis pendens, and shall forthwith give notice, as hereinafter provided, to each person appearing of record as an owner of property affected thereby and to each person appearing of record as a holder of any mortgage, lien, assessment or other encumbrance on such property or interest therein (a), in the case of any such person found to be residing within this state, by causing a copy of such notice, with a copy of such statement of compensation, to be served upon each such person by a state marshal constable or an indifferent person, in the manner set forth in section 52-57 for the service

of civil process and (b), in the case of any such person who is a nonresident of this state at the time of the filing of such statement of compensation and deposit or of any such person whose whereabouts or existence is unknown, by mailing to each such person a copy of such notice and of such statement of compensation at least twice in a newspaper published in the judicial district and having daily or weekly circulation in the town in which such property is located. Any such published notice shall state that it is notice to the widow or widower, heirs, representatives and creditors of the person holding such record interest, if such person is dead. If, after a reasonably diligent search, no last-known address can be found for any interested party, an affidavit stating such fact, and reciting the steps taken to locate such address, shall be filed with the clerk of the superior court and accepted in lieu of mailing to the last-known address. Not less than twelve days nor more than ninety days after such notice and such statement of compensation have been so served or so mailed and first published, the redevelopment agency shall file with the clerk of the superior court a return of notice setting forth the notice given and, upon receipt of such return of notice, such clerk shall, without any delay or continuance of any kind, issue a certificate of taking setting forth the fact of such taking, a description of all the property so taken and the names of the owners and of all other persons having a record interest therein. The redevelopment agency shall cause such certificate of taking to be recorded in the office of the town clerk of each town in which such property is located.

Upon the recording of such certificate, title to such property in fee simple shall vest in the municipality, and the right to just compensation shall vest in the persons entitled thereto. At any time after such certificate of taking has been so recorded, the redevelopment agency may repair, operate or insure such property and enter upon such property, and take whatever action is proposed with regard to such property by the project area redevelopment plan. The notice referred to above shall state (a) that not less than twelve days nor more than ninety days after service or mailing and first publication thereof, the redevelopment agency shall file, with the clerk of the superior court of the judicial district in which such property is located, a return setting forth the notice given, (b) that upon receipt of such return such clerk shall issue a certificate for recording in the office of the town clerk of each town in which such property is located, (c) that upon the recording of such certificate, title to such property shall vest in the municipality, the right to just compensation shall vest in the persons entitled thereto and the redevelopment agency may repair, operate or insure such property and enter upon such property and take whatever action may be proposed with regard thereto by the project area redevelopment plan and (d) that such notice shall bind the widow or widower, heirs, representatives and creditors of each person named therein who then or thereafter may be dead. When any redevelopment agency acting in behalf of any municipality has acquired or rented real property by PURCHASE, LEASE, EXCHANGE or GIFT in accordance with the

provisions of this section, or in exercising its right of EMINENT DOMAIN has filed a statement of compensation and deposit with the clerk of the superior court and has caused a certificate of taking to be recorded in the office of the town clerk of each town in which such property is located as herein provided, any judge of such court may, upon application and proof of such acquisition or rental or such filing and deposit and such recording, order such clerk to issue an execution commanding a state marshal to put such municipality and the redevelopment agency, as its agent, into peaceable possession of the property so acquired, rented or condemned. The provisions of this section shall not be limited in any way by the provisions of chapter 832.

C.G.S. § 48-17a. *Reimbursement of owner for costs, disbursements and expenses on failure or abandonment of condemnation proceeding.* The state court having jurisdiction of a proceeding instituted by a state agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if (1) the final judgment is that the state agency cannot acquire the real property by condemnation; or (2) the proceeding is abandoned by the state.

[Exhibit #16]

No. 162923

AUGUSTUS SIMMONS	**: SUPERIOR COURT**
VS.	**: HARTFORD COUNTY**
FRANK C. PARIZEK, ET AL	**: JANUARY 11, 1977**

The Gravamen of the Plaintiff's complaint is that the Defendants' unconsented entry upon his land and the erection and continued maintenance of a 6-foot high cyclone fence around it, constituted a taking of the Plaintiffs land without statutory authority and also resulted in an uncompensated taking in the constitutional sense in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of Article First, Sec. 11 of the Connecticut Constitution.

Judgment may enter as follows: For the Plaintiff granting him possession of the land described in the complaint as the Title Owner thereof. The Defendants or their successors shall, within 100 days, vacate the land shown as Parcel C on the map entitled "Property of Anastasia Simmons, East Side Rainbow Road, East Granby, Connecticut, W.M. Alford Civil Engineer, scale: 1 in. = 60 ft. date October, 1964" and recorded at Vol. 12 (map) page 568 of the East Granby Land Records. The Defendants, or their successors, within such legal authority as may exist and permit, shall take appropriate steps toward not renewing the lease

to the United States relative to the instrument landing lights situated on said Parcel C. The Defendants or their successors shall pay to the plaintiff the amount of $37,813.64 for rent due through October, 1969, together with an appraiser's fee of $1,800 and a map allowance of $250.00.

State of Connecticut } ss

Hartford County }

I, Thomas H. Abraham, clerk of the superior court of said state within and for said country, hereby certify the foregoing to be a true copy of the original memorandum of decision on file in this office on No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al.

In testimony whereof, I have hereunto set my hand and the seal of said superior court at Hartford, in said county this 17th day of January 1977.

Thomas H. Abraham, Clerk